8-17-87
Vol. 52 No. 158
Pages 30653-30878

federal register

Monday
August 17, 1987

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 52 FR 12345.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: September 29, at 9 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Janice Booker, 202-523-5239

Contents

Federal Register
Vol. 52, No. 158
Monday, August 17, 1987

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
Vol. 52, No. 158
Monday, August 17, 1987

Presidential Documents

Title 3—

The President

Proclamation 5693 of August 13, 1987

National Child Support Enforcement Month, 1987

By the President of the United States of America

A Proclamation

Over 15 million children in the United States live in households with only one parent present. Only about one-third receive child support payments, and many do not receive the full amount that is owed them. American children are being deprived of billions of dollars in support each year, leading to a reduced standard of living and, with tragic frequency, debilitating poverty.

Although the Congress and the Executive branch have designed programs to help nurture children and protect them from poverty, the ultimate responsibility for the care of children belongs with their parents. Ensuring that parents provide for their children is an important goal for our Nation. As I have said, the family is the most basic support system there is, and the most fundamental duty of a parent is to provide financial support to his or her children.

In 1984, the Congress strengthened the Federal-State child support system and improved incentives for State governments to implement effective practices to alleviate the financial distress of children. Dedicated cooperation among family support enforcement personnel, the judiciary, and the legal community has led to greater success in locating absent parents, establishing paternity, and, ultimately, collecting child support. Nonetheless, much remains to be done to foster a nationwide conviction that child support represents not only a legal responsibility but a profound ethical obligation of parents and an urgent moral right of children.

The Congress, by House Joint Resolution 313, has designated the month of August 1987 as "National Child Support Enforcement Month" and has authorized and requested the President to issue a proclamation in its observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of August 1987 as National Child Support Enforcement Month, and I call upon all government agencies and the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of August, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-18906
Filed 8-14-87; 11:05 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5694 of August 13, 1987

Citizenship Day and Constitution Week, 1987

By the President of the United States of America

A Proclamation

Every year for more than three decades, we Americans have celebrated our constitutional rights and responsibilities as citizens of the United States through the observance of Citizenship Day and Constitution Week. In 1987 this traditional celebration takes on special significance, as September 17 marks the 200th anniversary of the signing of our Constitution.

In anticipation of this occasion, the Commission on the Bicentennial of the United States Constitution will conduct a special observance on September 16, 1987, entitled "A Celebration of Citizenship." On this date, millions of students will reflect upon the blessings of liberty bestowed by our Constitution. Parents and adults can join them in paying tribute to the Framers of the Constitution and in gratefully recalling the privileges and duties secured by our Constitution. At 1:00 p.m., E.D.T., a national and international radio and television broadcast will unite all Americans in a recitation of the Pledge of Allegiance. The broadcast will include a reading of the Preamble to our Constitution. It is my hope that all Americans will take advantage of this opportunity to gain new insight into the precious principles of our governing document.

Those principles have stood the tests of time and turmoil. In 1787, we were a Nation of some four million people, living in 13 sovereign States, aligned along the eastern seaboard. The States were "united" in name only, barely held together by the Articles of Confederation, an agreement of mutual interest among the 13 original colonies drafted during the Revolutionary War. Once the common enemy was defeated, the general confederation began to unravel. Many of the States had their own army, printed their own currency, and charged tariffs to other States for using their ports and roads.

A convention was called in Philadelphia in May 1787 for the sole purpose of making the Articles of Confederation "adequate to the exigencies of Government and preservation of the Union." Many of the Nation's leaders feared that unless a stronger national government was created, the country would founder, leading to the formation of independent republics or the reaccession of foreign powers. Despite the long odds against success, the Framers were able, through numerous compromises, to fashion a blueprint for a new Nation. In this peaceful revolution, the States transformed their loose political alliance into a Federal union under the first written national Constitution in history. Today, 200 years later, that Constitution is the oldest written instrument of democratic rule in the world still in use, and it continues to proclaim and to shape a peaceful revolution toward freedom and prosperity for all mankind.

The Congress, by joint resolution of February 29, 1952 (36 U.S.C. 153), designated September 17 as "Citizenship Day" in commemoration of the signing of the Constitution and in recognition of all who, by coming of age or by naturalization, have attained the status of citizenship, and authorized the President to issue annually a proclamation calling upon officials of the government to display the flag on all government buildings on that day. Also, by joint resolution of August 2, 1956 (36 U.S.C. 159), the Congress designated the week beginning September 17 and ending September 23 of each year as

"Constitution Week" in recognition of the historic importance of the Constitution and the significant role it plays in our lives today.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim September 17, 1987, as Citizenship Day and call upon appropriate government officials to display the flag of the United States on all government buildings. I urge Federal, State, and local officials, as well as leaders of civic, educational, and religious organizations, to conduct ceremonies and programs that day to commemorate the occasion.

Furthermore, I proclaim the week beginning September 17 and ending September 23, 1987, as Constitution Week, and I urge all Americans to observe that week with appropriate ceremonies and activities in their schools, churches, and other suitable places.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of August, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-18907
Filed 8-14-87; 11:06 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 52, No. 158
Monday, August 17, 1987

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 574]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 574 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 366,000 cartons during the period August 16 through August 22, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 574 (§ 910.874) is effective for the period August 16 through August 22, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250–0200, telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987–88. The committee met publicly on August 11, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by a 9 to 3 vote (with one abstention) a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.874 is added to read as follows:

§ 910.874 Lemon regulation 574.

The quantity of lemons grown in California and Arizona which may be handled during the period August 16 through August 22, 1987, is established at 366,000 cartons.

Dated: August 12, 1987.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–18740 Filed 8–14–87; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1421

Grain Reserve Program for 1986 and Subsequent Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations at 7 CFR Part 1421 which govern the Farmer-Owned Grain Reserve (FOR) Program for 1986 and subsequent crops. Specifically, this final rule amends: (1) The length of reserve agreements, (2) the maximum quantity that may be stored in the FOR, and (3) the trigger release levels as mandated by the Agricultural Act of 1949, as amended by the Food Security Act of 1985. In addition, this final rule will make certain technical changes.

EFFECTIVE DATE: This final rule shall become effective on August 14, 1987.

FOR FURTHER INFORMATION CONTACT: Lynda Flament, Program Specialist, Cotton, Grain and Rice Price Support Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013; Phone (202) 447–4229.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1421) have been approved by the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Number 0560-0087.

This final rule has been reviewed under USDA procedures established in accordance with provisions of Departmental Regulation 1512-1 and Executive Order 12291 and has been classified "not major". It has been determined that the provisions of this final rule will not result in (1) an annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

The title and number of the Federal Assistance Program to which this final rule applies are: Title-Commodity Loans and Purchases Number 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The Food Security Act of 1985 amended section 110 of the Agricultural Act of 1949, as amended, (the "1949 Act"). Since the purpose of this final rule is merely to correct and update the Grain Reserve Program regulations due to these amendments, it has been determined that no public participation with respect to comments on this action is necessary. Accordingly, this final rule will amend 7 CFR Part 1421 with respect to: (1) The length of FOR agreements, (2) the maximum quantity that may be stored in the FOR, and (3) the trigger release levels that are established for the FOR. In addition, this final rule will make certain technical changes.

List of Subjects in 7 CFR Part 1421

Grain loan programs/Agricultural price support programs, Warehouses.

Final Rule

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for Part 1421 continues to read as follows:

Authority. Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714(b) and 714(c), sec. 110 of the Agricultural Act of 1949, as amended, 91 Stat. 951, as amended (7 U.S.C. 1445(e)).

2. 7 CFR 1421.741 is revised to read as follows:

§ 1421.741 Length of reserve agreements.

Reserve agreements shall be for a period as determined and announced by CCC.

3. 7 CFR 1421.742 is revised to read as follows:

§ 1421.742 Limit on reserve quantity.

The maximum quantity of wheat and feed grains stored under this program shall be such quantity as determined and announced by the Secretary. The upper limit on the total quantities of wheat that may be stored under this program shall not exceed 30 percent of the estimated total domestic and export usage of wheat during the marketing year, and 15 percent for feed grains. Notwithstanding the maximum percent established, the Secretary may establish upper limits at higher levels, but not in excess of 110 percent of the levels stated. In no event, however, shall such levels be less than 17 percent of the total domestic and export usage for the current marketing years for wheat, and 7 percent for feed grains.

4. The heading of § 1421.752 is changed to read as follows:

§ 1421.752 Commingling and replacement of wheat and feed grains.

* * * * *

§ 1421.753 [Amended]

5. 7 CFR 1421.753(a) is amended by removing the second, third, fourth, and fifth sentences and inserting in lieu of thereof the following:

"Trigger release levels will be the higher of 140 percent of the nonrecourse loan rate for the commodity or the established targeted price for such commodity".

6. 7 CFR 1421.754 is amended by revising the first sentence to read as follows:

§ 1421.754 Maturity.

Grain reserve loans mature and are due and payable on the last day of the 36th calendar month after the maturity date of the regular loan agreement or the expiration date of the purchase agreement.* * *

Signed at Washington, DC, on August 4, 1987.

Vern Neppl,

Acting Administrator, Agricultural Stabilization and Conservation Service; and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87-18570 Filed 8-14-87; 8:45 am]

BILLING CODE 3410-05-M

Farmers Home Administration

7 CFR Part 1924

Planning and Performing Construction and Other Development

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of compliance date.

SUMMARY: The Farmers Home Administration (FmHA) announces that when FmHA regulations contained in 7 CFR Part 1924, Subpart A were revised by a final rule published in the Federal Register, 52 FR 7998, on Friday, March 13, 1987, the allowance for a transition period was inadvertently not included. Subsequently, this notice establishes a transition period until December 31, 1987, to phase in certification requirements of that revision. During that period of time in those States where certification of single family housing building plans and specifications cannot be readily obtained, uncertified plans and specifications will be accepted. Uncertified plans and specifications will be reviewed by the FmHA County Supervisor in accordance with the former FmHA Minimum Property Standards (MPS). These standards were adopted from the Department of Housing and Urban Development (HUD) as of September 1, 1982, and were utilized until the May 13, 1987, revision.

DATE: The transition period will be through December 31, 1987.

ADDRESS: Submission of plans and specifications will be to FmHA field offices; interested persons may contact their State FmHA Office for information.

FOR FURTHER INFORMATION CONTACT: James A. Weibel, Senior Loan Officer, Single Family Housing Processing

Division, FmHA, USDA, Room 5347, South Agriculture Building, Washington, DC 20250, telephone 202–382–1485.

SUPPLEMENTARY INFORMATION: The revision to FmHA Instruction 1924–A, "Planning and Performing Construction and Other Development," on March 13, 1987, replaced the existing MPS with other development standards.

Paragraph 1924.5 of the revised regulation requires certification by qualified persons that single family housing building plans and specifications meet the applicable development standard selected by the applicant. Upon implementation of this requirement by FmHA field offices, it became evident that in some areas certification was not possible for various reasons. Therefore, in order to continue to have a viable housing program and to allow time to phase in the certification requirement, a transition period is necessary.

The FmHA programs which are listed in the Catalog of Federal Domestic Assistance under numbers 10.405–Farm Labor Housing Loans and Grants; 10.411—Rural Housing Site Loans; 10.420 Rural Self-Help Housing Technical Assistance are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983).

Numbers 10.404—Emergency Loans; 10.407—Farm Ownership Loans; 10.410—Very Low- and Low-Income Housing Loans are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Dated: August 10, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87–18768 Filed 8–14–87; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket Nos. RM86–6–004, RM86–6–005, and RM86–6–006]

Construction Work In Progress

Issued: August 12, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting rehearing for the purpose of further consideration.

SUMMARY: On June 18, 1987, the Federal Energy Regulatory Commission issued a final rule (Order No. 474) to revise regulations concerning filings to include costs associated with construction work in progress (CWIP) in the rate base of public utilities under Part II of the Federal Power Act. Order No. 474 was issued pursuant to a remand of the Commission's prior CWIP rule (Order No. 298) by the United States Court of Appeals for the District of Columbia Circuit, which affirmed in part but vacated in part Order No. 298, while expressing concerns about the anticompetitive implications of CWIP in rate base. *Mid-Tex Electric Cooperative, Inc., et al.* v. *FERC,* 773 F.2d 327 (1985).

In this order, the Commission grants rehearing of its decision solely for the purpose of further consideration.

EFFECTIVE DATE: August 12, 1987.

FOR FURTHER INFORMATION CONTACT: Andre Goodson, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8467.

SUPPLEMENTARY INFORMATION:

Order Granting Rehearing for Purpose of Further Consideration

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On June 18, 1987, the Commission, pursuant to a remand of the Commission's Order No. 298 from the United States Court of Appeals for the District of Columbia Circuit,[1] issued a final rule adopting revised regulations concerning filings to include costs associated with construction work in progress in rate base.[2]

Pursuant to 18 CFR 385.713 (1987), several parties filed requests for rehearing of the above-captioned proceeding.[3] In order to review more fully the arguments raised, the Commission grants rehearing of the order solely for the purpose of further consideration. This action does not constitute a grant or denial of the requests on their merits in whole or in part.

[1] Mid-Tex Electric Cooperative Inc., *et al.* v. FERC, 773 F.2d 327 (1985).

[2] Order No. 474, 52 FR 23948 (June 26, 1987), III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,751 (1987).

[3] The following parties filed requests for rehearing: New England Power Company, Public Systems, and National Rural Electric Cooperative Association, *et al.*

The Commission Orders:

Rehearing of the Commission's order in the above-captioned proceeding is hereby granted solely for the purpose of further consideration. Pursuant to Rule 713(d) of the Commission's Rules of Practice and Procedure (18 CFR 713(d) (1987)), no answers to the requests for rehearing will be entertained by the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18741 Filed 8–14–87; 8:45 am]

BILLING CODE 6717-01-M

---

18 CFR Parts 35 and 389

[Docket No. RM87–4–001]

Rate Changes Relating to Federal Corporate Income Tax Rates for Public Utilities

Issued: August 12, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Granting Rehearing Solely for the Purpose of Further Consideration.

SUMMARY: On June 26, 1987, the Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 475) to establish an abbreviated filing procedure that electric public utilities could use to reflect the reduction in the corporate income tax under the Tax Reform Act of 1986.

In this order, the Commission grants rehearing of its decision solely for the purpose of further consideration.

EFFECTIVE DATE: August 12, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas J. Lane, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION:

Order Granting Rehearing Solely for the Purpose of Further Consideration

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On June 26, 1987, the Commission issued a final rule establishing an abbreviated filing procedure that public utilities could use to reduce their rates to reflect the reduction in the Federal corporate income tax rate under the Tax Reform Act of 1986.

Pursuant to 18 CFR 385.713 (1987), Coast Electric Power Association, *et al.*[1] filed a request for rehearing of the above-mentioned proceeding. In order to review more fully the arguments raised, the Commission grants rehearing of the order solely for the purpose of further consideration. This order is effective on the date of issuance. This action does not constitute a grant or denial of the request on its merits in whole or in part.

Pursuant to Rule 713(d) of the Commission's Rules of Practice and Procedure (18 CFR 713(d) (1987)), no answers to the requests for rehearing will be entertained by the Commission.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18742 Filed 8-14-87; 8:45 am]

BILLING CODE 6717-01-M

[1] Coast Electric Power Association, Connecticut Municipal Electric and Gas Association, East Mississippi Electric Power Association, Kansas Electric Power Cooperative, Inc., MAP-PAL, Inc., Municipal Electric Systems of Oklahoma, National Rural Electric Cooperative Association, North Carolina Electric Membership Corporation, Northeast Texas Electric Cooperative, Inc., Oglethorpe Power Corporation, Sam Rayburn G&T, Inc., Seminole Electric Cooperative, Inc., Singing River Electric Power Association, South Mississippi Electric Power Association.

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Parts 353 and 355

[Docket No. 60958-7145]

Antidumping and Countervailing Duties; De Minimis Dumping Margins and De Minimis Subsidies

AGENCY: International Trade Administration; Department of Commerce.

ACTION: Final rule.

SUMMARY: The International Trade Administration is amending the regulations on antidumping duties (19 CFR Part 353) and countervailing duties (19 CFR Part 355) to disregard any weighted-average dumping margin and any net subsidy that is *de minimis*. For this purpose, the rule defines *de minimis* as less than 0.5% *ad valorem* or the equivalent specific rate.

EFFECTIVE DATE: September 16, 1987.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, Acting Deputy Chief Counsel for Import Administration 202/377-1411.

SUPPLEMENTARY INFORMATION: In 1980, the International Trade Administration (ITA) promulgated final rules concerning antidumping and countervailing duties (19 CFR Parts 353 and 355, respectively). At that time, ITA did not include a provision for disregarding *de minimis* net subsidies or dumping margins. In practice, however, ITA considered weighted-average dumping margins and aggregate net subsidies of less than 0.5% *ad valorem* as *de minimis* and disregarded them.

In *Carlisle Tire and Rubber Co.* v. *United States*, —— CIT ———, Slip Op. 86-45 (April 29, 1986), the Court of International Trade held that ITA must either promulgate a rule in accordance with the notice and comment procedures of the Administrative Procedure Act establishing 0.5% as the *de minimis* standard for its determinations, or it must explain the basis for each determination in which it decided that a weighted-average net subsidy or dumping margin below 0.5% was *de minimis*.

Accordingly, on October 6, 1986 (51 FR 35529), the Department published a proposed *de minimis* rule, pursuant to which net aggregate subsidies and *ad valorem* dumping margins of less than 0.5% would be disregarded for purposes of publishing or revoking orders, setting deposit rates, or assessing countervailing duties.

Description

This final rule, which is the same as the proposed rule with one clarifying change, adds new § 353.24 to the antidumping regulations (19 CFR Part 353) and new § 355.8 to the countervailing duty regulations (19 CFR Part 355). These additions are described below.

1. *Section 353.24.* The rule adds new § 353.24 consisting of three paragraphs.

Paragraph (a) states that the Secretary will disregard any weighted-average dumping margin that is less than 0.5% *ad valorem* or the equivalent specific rate. This is the *de minimis* standard which ITA has consistently applied since 1980.

Paragraph (b)(1) defines "dumping margin" as the amount by which the fair value or foreign market value exceeds the United States price of the merchandise, as these amounts are determined by the Secretary under the Tariff Act of 1930, as amended (the "Act") 19 U.S.C. 1673. This margin is the amount of dumping duty that the Secretary instructs the Customs Service to assess on the merchandise under section 751 of the Act, 19 U.S.C. 1675.

Paragraph (b)(2) defines "weighted-average dumping margin" (also called the "*ad valorem* dumping margin") as the percentage which the sum of all dumping margins comprises of the total U.S. price for all entries of the merchandise into the United States during the period investigated or reviewed. In fair value investigations, ITA calculates a weighted-average dumping margin for each company investigated and an additional weighted-average margin for all companies not specifically investigated. In administrative reviews, ITA calculates a weighted-average dumping margin for each company reviewed, which ITA uses solely to set the cash deposit rate for each company. For any new shipper not previously investigated or reviewed, ITA generally sets the deposit rate at the highest weighted-average dumping margin for a reviewed firm which made a shipment of the subject merchandise during the review period.

Paragraph (c) states that the Secretary will not disregard *de minimis* margins for the purpose of actually assessing dumping duties. Therefore, paragraph (a) does not apply to references to the assessment of duties that are found in 19 CFR 353.48, 353.50, and 353.53. Paragraph (c) is intended to clarify that paragraph (a) applies to the following determinations: preliminary determinations and applications of provisional measures described in 19 CFR 353.39; final determinations and deposit requirements described in 19 CFR 353.44; exclusions under 19 CFR 353.45; deposit requirements under 19 CFR 353.48; administrative determinations (other than assessment determinations) and deposit requirements under § 353.53; and revocation determinations under 19 CFR 353.54.

2. *Section 355.8.* The rule adds new § 355.8 to 19 CFR Part 355, stating that the Secretary will disregard any aggregate net subsidy, as defined in section 771(6) of the Act (19 U.S.C. 1677(6)), which is less than 0.5% *ad valorem* or the equivalent specific rate. This is the *de minimis* standard which ITA has consistently applied since 1980.

Section 355.8 applies to the assessment of countervailing duties as well as to all determinations of aggregate net subsidies under 19 CFR 355.28, 355.31, 355.33, 355.38, 355.41, and 355.42.

Executive Order 12291

ITA has determined that these revisions of the antidumping and countervailing duty regulations are not major rules as defined in section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981) because they will not: (1) Have a major monetary effect on the economy; (2) Result in a major increase in costs or prices; or (3) Have a

significant adverse effect on competition (domestic or foreign), employment, investment, productivity, or innovation.

Regulatory Flexibility Act

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small business entities because it does not change existing practices. As a result, an initial Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

This rule does not contain a provision for collection of information that is subject to the requirements of the Paperwork Reduction Act.

Eight firms submitted comments on the proposed regulation. These comments, and the Department's reactions to them, are summarized below.

1. Adoption of a De Minimis Test

Several parties suggested that the Department not adopt 0.5%, or any other number, as an automatic *de minimis* threshold. They argued that any such designation would be arbitrary, unnecessary, and inconsistent with the past practice of both the Departments of the Treasury and Commerce, which on occasion treated *ad valorem* margins smaller than 0.5% as significant for comparable purposes. One comment endorsed an absolute, bright-line standard on the basis that it would promote certainty and avoid needless litigation.

The doctrine of *de minimis non curat lex*, that the law does not concern itself with trifles, is a basic tenet of Anglo-American jurisprudence, inherent in all U.S. laws. With respect to the antidumping and countervailing duty laws, the Department has concluded that the potential benefits to domestic petitioners from orders on dumping margins or net subsidies below 0.5% are outweighed by the gains in productivity and efficiency provided by a *de minimis* rule. Even in price-sensitive markets, the effect of requiring a deposit or assessment of duty based on a rate of 0.5% *ad valorem* would be negligible. No party submitting comments has provided any information to support a different conclusion. Accordingly, it would be unreasonable for the Department and the U.S. Customs Service to squander their scarce resources administering orders for which the dumping margins and net subsidies are below 0.5%. The fact that the Departments of the Treasury and Commerce may not always have applied a uniform *de minimis* standard in the past is an additional reason supporting the adoption of a fixed standard which can be applied consistently in the future.

2. Bright-Line Test

Two parties suggested that, rather than automatically disregarding margins below 0.5%, a *de minimis* rule should only provide respondents with the opportunity to make an affirmative showing that dumping margins or net subsidies below 0.5% are *de minimis* in particular circumstances. Conversely, two parties suggested that margins below 0.5% should be disregarded automatically, and that respondents also should be given an opportunity to demonstrate that margins greater than 0.5% are *de minimis* in particular cases. Three specific circumstances in which it was suggested that margins greater than 0.5% could be treated as *de minimis* were: (1) Where a margin is caused by sales (such as accommodation sales) not made in the ordinary course of trade; (2) where a margin would not be found taking the price of all sales, including those priced above foreign market value ("FMV"), into account; and (3) where a margin is caused by currency fluctuation.

The efficacy of a bright-line *de minimis* threshold in reducing the administrative burden on the Department depends precisely on its elimination of the need to exercise administrative discretion in certain cases. By incorporating the very discretionary judgments which a *de minimis* rule is designed to avoid, a flexible standard would be self-defeating. Rather than defining a class of cases which the Department could disregard as insignificant, a flexible standard would force the Department to make additional determinations in those very cases.

Since the *de minimis* threshold is a weighted average, at least one of the factors listed by the comments is accounted for in the proposed rule. A small number of promotional or employee discount sales would not themselves necessarily produce a weighted average margin above 0.5%.

Finally, whether "negative margins" (on sales above foreign market value) or currency fluctuations should be taken into account in calculating dumping margins are separate issues, beyond the scope of this rulemaking. Although the Department recognizes that the treatment accorded these two variables may determine whether a weighted-average margin or subsidy rate in a particular case is *de minimis*, that is also true of *every* adjustment provided for by the Act. The Department could not entertain such suggestions without permitting this rulemaking to become a forum for commenting on other aspects of the Department's practice which, in particular cases, could result in weighted-average margins above or below *de minimis*. The instant rule has therefore been limited to setting a *de minimis* threshold where the dumping margin or net subsidy is assumed to have been calculated correctly. See the answers to Comments 6 and 7.

3. Threshold Level

Several parties suggested that the *de minimis* threshold be set at 1%, on the basis that 1% represents a level of benefit not worth the expense of an investigation or annual reviews.

After many years of applying a 0.5% *de minimis* threshold, the Department has developed no basis to conclude that 1% represents a level of benefit not worth the expense of investigations or annual reviews. No party offered specific information to support the suggestion. Accordingly, the Department does not think it appropriate to adopt 1% as the *de minimis* threshold.

4. Sale Quantities

One party commented that quantities of dumped sales constituting less than 0.5% of all sales should also be disregarded as *de minimis*, at least where the dumped sales were not made in the ordinary course of trade.

The Department believes that a parallel threshold for small quantities is not appropriate. Based on the total value of each entry, the duties on small numbers of dumped sales can be very large, as, for example, where expensive items such as transformers or other heavy equipment are involved. The antidumping duties on such sales should be collected. If the number of dumped sales is small, there is unlikely to be a weighted-average margin above *de minimis*, unless the dumped sales are of above-average value. Therefore, the rule addresses the issue raised by this comment to some extent.

5. "Or the Equivalent"

One party commented that the words "... or the equivalent" in paragraph (a) of the proposed § 353.24 be dropped, on the basis that they were undefined, vague, and suggested that margins above 0.5% would be treated as *de minimis* in some circumstances.

We agree that the words "... or the equivalent" in paragraph (a) of the proposed regulation were ambiguous, and we have changed the final text to read "or the equivalent specific rate."

This language means simply that a dumping margin expressed in dollars, rather than as a percentage, is *de minimis* where the dollar amount is less than 0.5% of the U.S. price. For example, a dumping margin of $1.00 is *de minimis* where the U.S. price of the product in question is $200.01 or more. Similarly, a subsidy expressed as $5.00 per pound is *de minimis* where the U.S. price of the product in question is $1000.01 per pound or more.

6. Weighted-Average Margins

One party suggested that the term "weighted-average margin" in § 353.24(b)(2) be defined to include so-called "negative margins" on sales priced above FMV. As the Department currently calculates weighted-average margins, sales above FMV are treated as sales at FMV, effectively eliminating the negative margins. The comment argued that including negative margins in the calculation of weighted-average margins would more accurately and fairly reflect respondent's pricing practices.

This proposal, that ITA fundamentally alter its method of calculating dumping margins, is beyond the scope of the *de minimis* rule, which is concerned only with how certain quantities are treated once they have been calculated under ITA's current methodology. See the response to Comment 2.

7. Deposit Rates

One party suggested that the Department add language to the rule stating that it would not use weighted-average dumping margins, as defined in § 353.24(b)(2), for the purpose of setting deposit rates, but that it would set deposit rates at the percentage which the sum of the dumping margins constituted of the total entered value of all entries investigated or reviewed. The comment argues that calculating deposit rates as a percentage of the total U.S. price, but then applying that percentage to the total entered value, understates the estimated duty, because the total U.S. price is invariably higher than the total entered value.

In suggesting that the Department revise the manner in which it sets deposit rates and append that new procedure to its *de minimis* rule, this comment also goes beyond the scope of this rulemaking, as explained in the response to Comment 2.

8. Duty Assessment

Two parties suggested that, where administrative reviews determine *de minimis* margins or net subsidy amounts, Customs should not assess antidumping or countervailing duties against the entries covered by that review. The comments assert that: (1) No purpose is served by assessing duties which have been administratively determined to be legally and commercially insignificant; and (2) ITA's practice is contrary to the antidumping and countervailing duty laws, which are not revenue raising in nature.

Since antidumping duties are assessed on an entry-by-entry basis, the margin on any particular entry is not known until it is actually calculated. In instances where the calculation yields a large dumping margin, even though the rate for the entry is less than *de minimis*, we see no reason why that duty should not be assessed. Where the amount of duty on a particular entry is very small, the determination whether that duty is not worth the cost of collection is properly within the province of the Customs Service.

Unlike antidumping duties, countervailing duties are assessed on all entries at the same weighted-average country-wide or company-specific rate. In no instance would the *ad valorem* countervailing duty on a particular entry differ from the country-wide or company-specific rate. Therefore, where the country-wide or company-specific rate is *de minimis*, Customs liquidates all entries without respect to countervailing duties.

Dated: June 23, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

List of Subjects in 19 CFR Parts 353 and 355

Business and industry, Foreign trade, Imports, Trade practices.

For the reasons stated in the preamble, we amend 19 CFR Parts 353 and 355 as follows:

PART 353—[AMENDED]

1. The authority citation for 19 CFR Part 353 continues to read as follows:

Authority: 5 U.S.C. 301, and subtitle IV, parts II, III, and IV of the Tariff Act of 1930, 19 U.S.C. 1301, *et seq.*, as amended by Title I of the Trade Agreements Act of 1979, Pub. L. 96–39, 93 Stat. 150, and section 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. 98–573, 98 Stat. 2948.

2. A new § 353.24 is added to 19 CFR Part 353, Subpart A, to read as follows:

§ 353.24 De minimis weighted-average dumping margins.

(a) Disregarding *de minimis* weighted-average dumping margin. For purposes of this part, the Secretary will disregard any weighted-average dumping margin, as defined in paragraph (b) of this section, that is less than 0.5% *ad valorem*, or the equivalent specific rate.

(b) Dumping margin and weighted-average dumping margin defined. (1) The term "dumping margin" means the amount by which the fair value or foreign market value, as applicable, exceeds the United States price, as determined by the Secretary under this part.

(2) The "weighted-average dumping margin" is the result of dividing the sum of the dumping margins determined in an investigation or an administrative review under this part by the sum of the United States prices calculated in the same investigation or review.

(c) Assessment of *de minimis* margins. For purposes of assessment of a dumping duty, the Secretary will not disregard any *de minimis* dumping margin.

PART 355—[AMENDED]

3. The authority citation for 19 CFR Part 355 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1303; 19 U.S.C. 2501 note; subtitle IV, parts I, III, and IV of the Tariff Act of 1930, 19 U.S.C. 1301, *et seq.*, as amended by Title I of the Trade Agreements Act of 1979, Pub. L. 96–39, 93 Stat. 150, and section 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. 98–573, 98 Stat. 2948.

4. A new § 355.8 is added to 19 CFR Part 355 to read as follows:

§ 355.8 De minimis net subsidies disregarded.

For purposes of this part, the Secretary will disregard any aggregate net subsidy that the Secretary determines is less than 0.5% *ad valorem*, or the equivalent specific rate.

[FR Doc. 87–18733 Filed 8–14–87; 8:45am]

BILLING CODE 3510–DS–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2603

Freedom of Information; Examination and Copying of Pension Benefit Guaranty Corporation Records

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation implementing the Freedom of Information Act to conform to the law enforcement provisions and the fee and fee waiver provisions of the Freedom of Information Reform Act of 1986 and the

Uniform Freedom of Information Act Fee Schedule and Guidelines promulgated by the Office of Management and Budget. This action is necessary to comply with the statutory requirements and those guidelines. The effect of this amendment is to conform the law enforcement and fee waiver provisions to the law, to establish fee schedules in accordance with the standards established by the OMB guidelines, and to notify the public of those provisions.

EFFECTIVE DATE: September 16, 1987.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8850 (202-778-8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Freedom of Information Act (FOIA), 5 U.S.C. 552, provides, *inter alia,* for public access to information from records of Government corporations such as the Pension Benefit Guaranty Corporation (PBGC). On June 3, 1975, the PBGC promulgated its regulation entitled Examination and Copying of Pension Benefit Guaranty Corporation Records, 29 CFR Part 2603, establishing the basic policies and procedures that it uses to process requests for information under the FOIA. The Freedom of Information Reform Act of 1986 (Reform Act), Pub. L. 99-570, modified the FOIA's fee and fee waiver provisions and also expanded its law enforcement protections. The Reform Act directed that each agency subject to the FOIA "promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under [FOIA] and establishing procedures and guidelines for determining when such fees should be waived or reduced." The Reform Act also directed the Office of Management and Budget (OMB) to promulgate guidelines providing for a uniform schedule of the FOIA fees for all such agencies.

On January 16, 1987, the OMB published a notice and request for public comment on its Proposed Fee Schedule and Administrative Guidelines (52 FR 1992). On March 27, 1987, the OMB published its Uniform Freedom of Information Act Fee Schedule and Guidelines in final form, incorporating changes considered appropriate as a result of comments received from the public (52 FR 10012). On April 23, 1987, the PBGC published a proposed amendment to its FOIA regulation to incorporate therein the Reform Act's law enforcement and fee waiver provisions, and to conform its fee schedule to that promulgated by the OMB. Two written comments were received on the proposed amendment, one relating to both the fee schedule and the waiver provisions and the other relating solely to the fee waiver provisions.

The written comment relating to the fee schedule contended that the guidelines issued by the OMB are not binding on agencies to the extent that they are inconsistent with the legislative intent of Congress in enacting the Reform Act. Specifically, the writer contended that the guidelines' definitions of "commercial use request", "educational institution", and "representative of the news media" do not properly reflect Congressional intent and suggested numerous changes. The writer also contended that the OMB's equating of the term "search time" to "manual search time" in the event of computer searches is unwarranted.

Favorable consideration of these comments and suggestions would be inconsistent with the OMB guidelines which the PBGC is required to follow. Furthermore, the OMB guidelines were promulgated in final form after the receipt and consideration of 80 comments. Each of the suggestions submitted by this commenter were fully considered by the OMB, and its reasons for rejecting them are fully explained in the Supplementary Information accompanying the OMB's final guidelines. For these reasons, the PBGC declines to incorporate the suggested changes. The PBGC, however, has clarified the rule with respect to searches in § 2603.51(b)(4) and made other changes for clarification purposes.

In § 2603.55(a) of its proposed amendment, the PBGC followed the statutory provisions relating to fee waivers, almost verbatim, primarily because of the statutory deadline for issuing regulations under the Reform Act. Although the two comments directed to this fee waiver provision both suggested that the PBGC's regulation include specific procedures and standards to be used in making fee waiver determinations, they suggested diametrically oppposite provisions. At issue is the fee waiver policy guidance issued by the Department of Justice in a memorandum from Assistant Attorney General Stephen J. Markman on April 2, 1987. The PBGC is studying the Department of Justice guidance, which was issued in furtherance of its statutory responsibility to encourage compliance with the FOIA, and will issue its procedures and standards for fee waivers in proposed form for public comment at a later date.

E.O. 12291 and The Regulatory Flexibility Act

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291 of February 17, 1981 (46 FR 13193) because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers, individual industries or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Any increase in fees due to inclusion of review time for commercial use requesters is likely to be offset by the decrease in fees due to the limits on search and duplication time that may be charged to other requesters. Accordingly, the PBGC certifies pursuant to section 605 of the Regulatory Flexibility Act that this regulation will not have a significant economic impact on a substantial number of small entities. In light of this certification, compliance with sections 603 and 604 is waived.

List of Subjects in 29 CFR Part 2603

Freedom of information.

In consideration of the foregoing, the Pension Benefit Guaranty Corporation hereby amends Part 2603 of Subchapter A of Chapter XXVI, Title 29, Code of Federal Regulations, as follows:

PART 2603—EXAMINATION AND COPYING OF PENSION BENEFIT GUARANTY CORPORATION RECORDS

1. The authority for Part 2603 continues to read as follows:

Authority: 5 U.S.C. 552, as amended by secs. 1801-1804, Pub. L. 99-570, 100 Stat. 3207-3248; 29 U.S.C. 1302 (b)(3).

§ 2603.2 [Amended]

2. Section 2603.2 is amended by removing from paragraph (c) the phrase "Office of the Executive Director of the" and inserting, in its place, "Communications and Public Affairs Department".

§ 2603.8 [Amended]

3. Section 2603.8 is amended by removing from paragraph (a) the reference to "2604.23" and inserting, in its place, "2603.23".

4. Section 2603.21 is amended by removing from the heading of paragraph (d) the word "Records" and inserting, in

its place, "Records or information"; by changing all references to "investigatory records" or "investigative records" throughout paragraph (d) to read "records and information"; and by revising the section heading and paragraphs (a) and (c) to read as follows:

§ 2603.21 Records or information compiled for law enforcement purposes.

(a) *Restrictions on public access authorized.* Pursuant to the provisions of exemption (7) set forth in 5 U.S.C. 552(b), as amended by Pub. L. 99–570, 100 Stat. 3207–3248, effective October 27, 1986, the disclosure from Corporation records of matters that are "records or information compiled for law enforcement purposes" and to which access by the public would be detrimental to such purposes or to rights of privacy as specified in the statute, may be refused. Access to such records may be refused for any one or more of several specific reasons. Thus, exemption (7) protects from the public access requirements of the Freedom of Information Act records or information compiled for law enforcement purposes whenever their disclosure to any person requesting them—

(1) Could reasonably be expected to interfere with enforcement proceedings; and/or

(2) Would deprive a person of a right to a fair trial or an impartial adjudication; and/or

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy; and/or

(4) Could reasonably be expected to disclose (i) the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and (ii) in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; and/or

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; and/or

(6) Could reasonably be expected to endanger the life or physical safety of any individual. Whenever a request is made which involves access to records described in paragraph (a)(1) of this section, and the investigation or proceeding involves a possible violation of criminal law and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendancy and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Corporation may treat the records as not subject to the requirements of 5 U.S.C. 552 and this part during only such time as that circumstance continues. Moreover, where one or more of the consequences in paragraphs (a)(1) through (a)(6) of this section would ensue from the disclosure of particular records to any person requesting access to records or information compiled for law enforcement purposes, no determination to grant access to such records may be made by the disclosure officer under the disclosure policy set forth in §§ 2603.8 and 2603.16 in the ordinary case because in such circumstances it would not ordinarily be possible to determine that disclosure would serve the public interest and would not impede any of the functions of the Corporation.

* * * * *

(c) *"Records or information" compiled for law enforcement purposes.* The protection afforded records or information compiled for law enforcement purposes under the exemption set forth in paragraph (a) of this section extends, according to the legislative history of Pub. L. 99–570, to any Federal law enforcement information relating to pending investigations or confidential sources if disclosure of such information could reasonably be expected to cause the harms indentified in paragraph (a) of this section.

* * * * *

5. Section 2603.32 is amended by revising paragraph (c) to read as follows:

§ 2603.32 Submittal of requests for access to records.

* * * * *

(c) To avoid delay in receipt of a sufficiently complete request at the Corporation, each such request should identify the category of the requester, as defined in § 2603.51(b); reasonably describe the records sought, as provided in § 2603.33; and state specifically that whatever costs will be involved pursuant to §§ 2603.51 through 2603.53 will be acceptable, or will be acceptable up to an amount not exceeding a named figure.

6. Section 2603.36 is revised to read as follows:

§ 2603.36 Receipt by agency of request.

(a) The disclosure officer shall, upon receipt of a request for access to records, have the date and time of such receipt immediately inscribed thereon. Except as provided in paragraphs (b) through (d) of this section, the request shall be deemed received and the period within which action on such request shall be taken, as set forth in § 2603.45, shall begin on the next business day following such date.

(b) A request for access to records shall be deemed received only if such request is sufficiently complete, as set forth in §§ 2603.33 through 2603.35.

(c) To protect requesters from an unexpected accrual of liability greater than they may wish to assume for access to requested records, when the Corporation anticipates that search, review, and/or duplication charges under Subpart B of this part may be substantial, the requester will be given prompt notification of the Corporation's estimate of the costs and no receipt of a complete request will be deemed to have occurred unless or until the requester has perfected the request by assurance of payment. Such assurance may be in the form of a statement that whatever costs will be involved pursuant to §§ 2603.51 through 2603.53 will be acceptable or will be acceptable up to an amount not exceeding a named figure. To avoid delay in receipt of a sufficiently complete request, the requester may include such statement in the request.

(d) Where it is known or estimated that a request for access to records will require charges for search, review, and/or duplication services in excess of $250, or where the requester has previously failed to pay a fee charged in a timely fashion, such request shall not be deemed received until the Corporation has received fee payments or assurance of payment, as required under the provisions of § 2603.54(b).

7. Section 2603.51 is revised to read as follows:

§ 2603.51 Charges for services.

(a) *Generally.* Pursuant to the provisions of the Freedom of Information Act, as amended, charges will be assessed to cover the direct costs of searching for, reviewing, and/or duplicating records requested under the Act from the Corporation, except where the charges are limited or waived under paragraph (b) or (d) of this section, according to the fee schedule in § 2603.52. No charge will be assessed if the costs of routine collection and processing of the fee would be equal to or greater than the fee itself.

(1) "Direct costs" means those expenditures which the Corporation actually incurs in searching for and

duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request under the Act and these regulations. Direct costs include, for example, the salary of the employee performing work (*i.e.,* the basic rate of pay plus benefits) or an established average pay for a homogeneous class of personnel (*e.g.,* all administrative/clerical or all professional/executive), and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) "Search" means all time spent looking for material that is responsive to a request under the Act and these regulations, including page-by-page or line-by-line identification of materials within a document, if required, and may be done manually or by computer using existing programming. "Search" should be distinguished from "review" which is defined in paragraph (a)(3) of this section.

(3) "Review" means the process of examining documents located in response to a request under the Act and these regulations to determine whether any portion of any document located is permitted or required to be withheld. It also includes processing any documents for disclosure, *e.g.,* doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(4) "Duplication" means the process of making a copy of a document necessary to respond to a request under the Act and these regulations, in a form that is reasonably usable by the requester. Copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (*e.g.,* magnetic tape or disk), among others.

(b) *Categories of requesters.* Requesters who seek access to records under the Act and these regulations are divided into four categories: commercial use requesters, educational and noncommercial scientific institutions, representatives of the news media, and all other requesters. The Corporation will determine the category of a requester and charge fees according to the following rules.

(1) *Commercial use requesters.* When records are requested for commercial use, the Corporation will assess charges, as provided in this subpart, for the full direct costs of searching for, reviewing for release, and duplicating the records sought. Fees for search and review may be charged even if the record searched for is not found or if, after it is found, it is determined that the request to inspect it may be denied under the provisions of 5 U.S.C. 552(b) and these regulations.

(i) "Commercial use" request means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(ii) In determining whether a request properly belongs in this category, the Corporation will look to the use to which a requester will put the documents requested. Moreover, where the Corporation has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Corporation will require the requester to provide clarification before assigning the request to this category.

(2) *Educational and noncommercial scientific institution requesters.* When records are requested by an educational or noncommercial scientific institution, the Corporation will assess charges, as provided in this subpart, for the full direct cost of duplication only, excluding charges for the first 100 pages.

(i) "Educational institution" means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(ii) "Noncommercial scientific institution" means an institution that is not operated on a "commercial" basis as that term is defined in paragraph (b)(1)(i) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(iii) To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research.

(3) *Requesters who are representatives of the news media.* When records are requested by representatives of the news media, the Corporation will assess charges, as provided in this subpart, for the full direct cost of duplication only, excluding charges for the first 100 pages.

(i) "Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(ii) To be eligible for inclusion in this category, the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester who is a representative of the news media shall not be considered to be a request that is for a commercial use.

(4) *All other requesters.* When records are requested by requesters who do not fit into any of the categories in paragraphs (b)(1) through (b)(3) of this section, the Corporation will assess charges, as provided in this subpart, for the full direct cost of searching for and duplicating the records sought, with the exceptions that there will be no charge for the first 100 pages of duplication and the first two hours of manual search time (or its cost equivalent in computer search time). Notwithstanding the preceding sentence, there will be no charge for search time in the event of requests under the Privacy Act of 1974 from subjects of records filed in the Corporation's systems of records for the disclosure of records about themselves. Search fees, where applicable, may be charged even if the record searched for is not found.

(c) *Aggregation of requests.* If the Corporation reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Corporation will aggregate any such requests and charge accordingly. In no case will the Corporation aggregate multiple requests on unrelated subjects from one requester.

(d) *Waiver or reduction of charges.* Circumstances under which searching, review, and duplication facilities or services may be made available to the

requester without charge or at a reduced charge are set forth in § 2603.55.

8. Section 2603.52, is amended by revising (a) introductory text, (a)(1), (b) introductory text and (c) to read as follows:

§ 2603.52 Fee schedule.

(a) *Charges for searching and review of records.* Charges applicable under this subpart to the search for and review of records will be made according to the following fee schedule:

(1) *Search and review time.* (i) Ordinary search and review by custodial or clerical personnel, $1.75 for each one-quarter hour or fraction thereof of employee worktime required to locate or obtain the records to be searched and to make the necessary review; and (ii) search or review requiring services of professional or supervisory personnel to locate or review requested records, $4.00 for each one-quarter hour or fraction thereof of professional or supervisory personnel worktime.

* * * * *

(b) *Charges for duplication of records.* Charges applicable under this subpart for obtaining requested copies of records made available for inspection will be made according to the following fee schedule and subject to the following conditions.

* * * * *

(c) *Other charges.* The scheduled fees, set forth in paragraphs (a) and (b) of this section, for furnishing records made available for inspection and duplication represent the direct costs of furnishing the copies at the place of duplication. Upon request, single copies of the records will be mailed, postage prepaid, free of charge. Actual costs of transmitting records by special methods such as registered, certified, or special delivery mail or messenger, and of special handling or packaging, if required, will be charged in addition to the scheduled fees.

9. Section 2603.53 is amended by revising paragraph (a) to read as follows:

§ 2603.53 Computerized records.

(a) Charges for information that is available in whole or in part in computerized form will be made available at the actual direct cost to the Corporation, including the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to the request, personnel salaries apportionable to the search, and tape or printout production or an established agency-wide average rate for CPU operating costs and operator/programmer salaries involved in FOIA searches. Charges will be computed at the rates prescribed in § 2603.52 (a) and (b).

* * * * *

10. Section 2603.54 is amended by removing from paragraph (a) the phrase "as set forth in §§ 2603.51–2603.53" and inserting, in its place, "as provided in this subsection"; and by revising paragraphs (b) and (c) to read as follows:

§ 2603.54 Payment of fees.

* * * * *

(b) *Advance payment or assurance of payment.* Payment or assurance of payment before work is begun or continued on a request may be required under the following rules.

(1) Where the Corporation estimates or determines that charges allowable under the rules in this subpart are likely to exceed $250, the Corporation may require advance payment of the entire fee or assurance of payment, as follows:

(i) Where the requester has a history of prompt payment of fees under this regulation, the Corporation will notify the requester of the likely cost and obtain satisfactory assurance of full payment; or

(ii) Where the requester has no history of payment for requests made pursuant to the Act and this regulation, the Corporation may require the requester to make an advance payment of an amount up to the full estimated charges.

(2) Where the requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing), the Corporation may require the requester to pay the full amount owed plus any applicable interest as provided in paragraph (c) of this section (or demonstrate that he has, in fact, paid the fee) and to make an advance payment of the full amount of the estimated fee.

When advance payment, assurance of payment, or payment of past due amounts is required by the Corporation under this paragraph, the request shall not be deemed received and the period within which action on such request shall be taken, as set forth in § 2603.45, shall not begin until the Corporation has received the required fee payment (including any applicable interest on past due amounts) or assurance of payment, whichever is required.

(c) *Late payment interest charges.* The Corporation may assess late payment interest charges on any amounts unpaid by the 31st day after the date a bill is mailed to a requester. Interest will be assessed at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date the bill is mailed.

11. Section 2603.55 is revised to read as follows:

§ 2603.55 Waiver or reduction of charges.

(a) The disclosure officer may waive or reduce fees otherwise applicable under this subpart when disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. A fee waiver request shall set forth full and complete information upon which the request for waiver is based.

(b) The disclosure officer may reduce or waive fees applicable under this subpart when the requester has demonstrated his inability to pay such fees.

Issued in Washington, DC, this 5th day of August, 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87-18483 Filed 8-14-87; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Approval of an Amendment to the Ohio Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing approval of a program amendment to the Ohio Abandoned Mine Land Reclamation (AMLR) Plan received by OSMRE pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

This amendment clarifies the role of Ohio's Rural Abandoned Mine Program (RAMP), allows use of "Opinions of Increase in Property Values" for property value increases of $2,000 or less, updates and streamlines Ohio's AMLR Plan appendices and program administration, and improves the format of selected informational tables in the Plan along with other minor technical changes.

The Federal Rules at 30 CFR Part 935 codifying decisions concerning the Ohio program are being amended to implement this action.

This amendment primarily clarifies how the Ohio AMLR program will comply with the Federal standards and will allow Ohio to better administer and update their AMLR Plan.

EFFECTIVE DATE: The rule is effective September 16, 1987.

FOR FURTHER INFORMATION CONTACT: Nina Rose Hatfield, Columbus Field Office Director, Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Columbus, Ohio 43232, Telephone (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 10, 1982, the Secretary of Interior approved the Ohio Program. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, can be found in the August 10, 1982, **Federal Register** (47 FR 35688–35721). Other actions on approval of the AMLR Plan Amendments are identified at 30 CFR 935.25.

II. Submission of the Current Amendment

On August 20, 1986, the State of Ohio submitted to OSMRE a proposed amendment to its AMLR Plan (Administrative Record No. OH–907). The revisions incorporated into this amendment are as follows:

1. Involvement of Other Governmental Agencies

This revision clarifies the role of the RAMP Committee as the primary forum for the involvement of other governmental agencies in the AMLR program. Use of the State RAMP Committee is to take the place of outdated mechanisms of cooperation which are not in use. The section of the Ohio AMLR plan affected by this change is 3.9.1.

2. Realty Appraisal Methods

This authorizes the use of "Opinions of Increase in Property Value" in lieu of conventional appraisals of property to be affected by AML project construction. These opinions would be prepared by qualified appraisers for properties likely to undergo insignificant increases in value as a result of reclamation work. This revision would only pertain to properties value increases up to $2,000. The section of the Ohio AMLR Plan affected by this revision is 3.7.4.

3. AMLR Plan Appendices

This includes deleting 13 appendices which contain outdated information or programs no longer used in the Ohio AMLR Program. The remaining appendices will be updated and retained in the AMLR Plan.

4. Program Administration

This revision allows Ohio to update tables of organization and descriptions of AMLR program staff member responsibilities.

5. Table Format Changes and Minor Corrections

This improves the format of various informational tables in the AMLR Plan and incorporates numerous minor changes to technical and numerical material throughout the AMLR Plan.

III. Public Comment

The Deputy Director solicited public comment and provided opportunity for public hearing on the proposed amendment in the March 9, 1987, **Federal Register** (52 FR 7176). The comment period closed on April 18, 1987, without receipt of any comments. Since no one requested an opportunity to testify at a public hearing, no hearing was held.

IV. Deputy Director's Findings

In accordance with section 405 of SMCRA, the Deputy Director finds that Ohio has submitted an amendment to its Abandoned Mine Land Reclamation Plan and has determined, pursuant to 30 CFR 884.15, that:

1. The State provided adequate notice and opportunity for public comment in the development of the plan and that the record does not reflect major unresolved controversies.
2. Views of other Federal agencies having an interest in the plan have been solicited and considered.
3. The State has the legal authority, policies, and administrative structure necessary to implement the amendment.
4. The proposed plan amendment meets all requirements of the OSMRE, AMLR Program provisions.
5. The State has an approved Surface Mining Regulatory Program.
6. The proposed plan amendment is in compliance with all applicable State and Federal laws and regulations.

V. Deputy Director's Decision

The Deputy Director, based on the above findings, is approving the proposed amendment submitted by Ohio on August 20, 1986.

VI. Procedural Requirements

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory program. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the States.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Author: The principal authors of this rule are Dave Buchanan, Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Columbus, Ohio 43232, Telephone (614) 866–0578 and (FTS) 943–2315 and Dan Pollack, Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone (412) 937–2905 and (FTS) 726–2903.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental regulations, Surface mining, Underground mining.

James W. Workman,
Deputy Director, Operations and Technical Services.

Date: August 10, 1987.

30 CFR Part 935 is amended as follows:

PART 935—OHIO

1. The authority citation for Part 935 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. Section 935.20 is revised to read as follows:

§ 935.20 Approval of Ohio Abandoned Mine Land Reclamation Plan.

The Ohio Abandoned Mine Land Reclamation Plan, as submitted on October 20, 1980, and as revised November 21, 1980, November 2, 1981, and January 22, 1982, is approved effective August 10, 1982. Copies of the approved plan are available at:

Ohio Department of Natural Resources, Division of Reclamation, Building H–2, 1855 Fountain Square Court, Columbus, Ohio 43224
Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, Columbus, Ohio 43232
Office of Surface Mining Reclamation and Enforcement, Administrative Records Office, 1100 L Street, NW., Room 5205, Washington, DC 20240.

3. Section 935.25 is revised to read as follows:

§ 935.25 Approval of Abandoned Mine Land Reclamation (AMLR) Plan amendments.

(a) The AMLR Plan Amendment as submitted on January 6, 1983, is approved effective May 24, 1983.

(b) The AMLR Plan Amendment as originally submitted on April 2, 1984, and subsequently revised October 10, 1984, is approved effective November 19, 1984.

(c) The AMLR Plan Amendment as originally submitted August 20, 1986, is approved.

[FR Doc. 87–18675 Filed 8–14–87; 8:45 am]

BILLING CODE 4310–05–M

---

30 CFR Part 946

Approval in Part and Deferral in Part of Amendments to the Virginia Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of several proposed amendments to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments consist of (1) regulatory revisions to limit the information required of self-bond applicants to that information authorized by State statute, and (2) revisions to the pool bond regulations to allow consideration of partial bond release after a minimum of one rather than two growing seasons after reclamation. Pending resolution of concerns expressed by the Environmental Protection Agency, OSMRE is deferring action on other regulatory revisions proposed by Virginia to allow the establishment of alternative effluent limitations for the remining of previously mined areas.

EFFECTIVE DATE: August 17, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Room 214, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219; Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, and disposition of comments and a detailed explanation of the conditions of approval, can be found in the December 15, 1981 **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15 and 946.16.

II. Submission of Amendments

By letter dated January 16, 1987 (Administrative Record No. VA–591), Virginia submitted several proposed amendments to its Coal Surface Mining Reclamation Regulations. These amendments consisted of:

(1) Revisions to section 480–03–19.700.5 and the addition of sections 480–03–19.785.19 and 480–03–19.825 to allow alternate National Pollutant Discharge Elimination System (NPDES) effluent limitations to be set for operations proposing to remine previously mined areas with existing pollutional discharges. These provisions would also authorize release of bond if the remined area is reclaimed and water quality is improved, or if total pollutional loading is not increased and other environmental benefits are realized.

(2) Revisions to section 480–03–19.801.13 to limit the information required of applicants proposing self-bonds under the Coal Surface Mining Reclamation Fund to only that information authorized by section 45.1–270.3(e) of the Code of Virginia, as set out in an opinion of the Virginia Attorney General dated October 18, 1984.

(3) Revisions to section 480–03–19.801.17(a) to allow requests for partial bond releases for operations participating in the Coal Surface Mining Reclamation Fund (Virginia's alternative pool bonding system) to be considered after a minimum of one growing season following reclamation instead of the two growing seasons now required.

OSMRE announced receipt of the proposed amendments in the March 27, 1987 **Federal Register** (52 FR 9892–9894), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on their substantive adequacy. No comments were received before or after April 27, 1987, the close of public comment period, and since no one requested an opportunity to testify at a public hearing, the scheduled hearing was cancelled.

III. Director's Findings

After a thorough review pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director is making the indicated findings for each proposed amendment:

1. Alternate Effluent Limitations for the Remining of Previously Mined Areas with Pollutional Discharges

Virginia proposes to add two new sections (480–03–19.785.19 and 480–03–19.825) to its regulations and to revise 480–03–19.700.5 by adding a number of new definitions. The new provisions would allow alternate NPDES effluent limitations to be set for operations proposing to remine previously mined areas with existing pollutional discharges. These provisions would also authorize release of the bond if the remined area is reclaimed and water quality is improved, or if total pollutional loading is not increased and other environmental benefits are realized.

Section 503(b)(2) of SMCRA and 30 CFR 732.17(h)(10)(ii) require that the Administrator of the Environmental Protection Agency (EPA) concur with all State program provisions relating to air or water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*) and the Clean Air Act as amended (42 U.S.C. 7401 *et seq.*). Since the proposed amendment would alter effluent limitations established under the NPDES program pursuant to the Clean Water Act and its implementing regulations, EPA concurrence is required before the Director may approve this amendment. By letter dated March 31, 1987, EPA conditioned its concurrence on the revision of several of the proposed regulatory changes. Therefore, the Director is deferring action on these

proposed provisions until EPA's concerns can be addressed and unconditional concurrence obtained.

2. Self-Bonding Requirements for Participants in Pool Bond Fund

Virginia proposes to revise its rules at 480–03–19.801.13(a)(2) to limit the information required of applicants proposing self-bonds under the Coal Surface Mining Reclamation Fund (pool bonding system) to only that information authorized by 45.1–270.3(e) of the Code of Virginia, in accordance with an opinion of the Virginia Attorney General dated October 18, 1984.

As approved on September 21, 1982 (47 FR 41556 *et seq.*) and modified on January 18, 1983 (48 FR 2123 *et seq.*), February 28, 1983 (48 FR 8271 *et seq.*) and December 27, 1983 (48 FR 56949 *et seq.*), the Virginia pool bonding rules required that applicants proposing self-bonds include a net worth certification of the applicant's parent organization if the applicant is a subsidiary corporation. The revised rules require certification of the parent organization's net worth only if the applicant uses or includes any assets or liabilities of the parent organization in computing or arriving at the applicant's net worth. Since the minimum net worth required for participation in the pool bonding system remains unchanged, the Director finds that this revision will not affect the findings upon which the alternative bonding system was originally approved, and that it is in compliance with and no less effective than the Federal regulations at 30 CFR 800.11(e) governing approval of alternative bonding systems.

In accordance with the Attorney General's opinion, the revised rule also deletes the requirement that the certification and financial statement prepared by the independent certified public accountant include a final determination regarding the applicant's ability to satisfactorily meet all obligations and costs under the proposed reclamation plan for the life of the mine. The Attorney General's opinion noted that such a determination would require the accountant to evaluate the validity of engineering calculations, an evaluation which would lie outside his/her area of expertise. The Director concurs with this opinion and finds that the deletion of this requirement would not render the pool bonding system less effective than the Federal requirements for alternative bonding programs at 30 CFR 800.11(e), because, as listed below, other program provisions provide adequate protection. Section 480–03–19.801.12(f) requires that bond be adjusted as the acreage in the permit area is revised; 480–03–19.801.13(c) requires that the financial statement and certification be updated to reflect prior reclamation obligations and self-bonding liabilities still in effect whenever a pool bond participant applies for an additional permit or permits; and 480–03–19.801.13(a)(2) continues to provide that, where the Division has a valid reason to believe that the permittee's net worth is less than required, it may require that the permittee submit a new financial statement and certification.

Virginia has also made several nonsubstantive editorial changes to section 480–03–19.801.13(a)(2), which the Director finds to be consistent with the Federal rules.

3. Bond Release Requirements for Participants in Pool Bond Fund

Virginia proposes to revise its rules at section 480–03.19.801.17(a) to allow partial bond releases for regraded and planted areas of operations participating in the Coal Surface Mining Reclamation Fund after a minimum of one full growing season or twelve months, whichever is longer, rather than the two full growing seasons previously required.

The Director finds that this change is consistent with the Federal regulations at 30 CFR 800.40(c)(2), which allow a partial bond release after vegetation has been established in accordance with the approved reclamation plan. Virginia's proposed minimum of one full growing season or one year, whichever is longer, should provide sufficient time to evaluate mortality after the first winter following initial seeding or planting. Since most vegetative failures occur within the first year after planting, use of this time period should be adequate to determine if vegetation is indeed established. However, the Director notes that section 480–03–19.801.18(c), which requires that a minimum of two full growing seasons have elapsed before the Division will consider any bond release for the permit area, appears to contradict and nullify the provisions of this amendment. The Director also notes that, in approving the pool bonding system on September 21, 1982 (47 FR 41557), he stipulated that the bond amounts to be held for the period of liability must be subject to the requirements of V807.11 and V807.12 (now codified as section 480–3–19.800.40), even though not expressly stated as such within section 480–03–19.801.17. Hence bond could be released only to the extent provided in section 480–03–19.800.40(c)(2).

IV. Public Comment

As discussed in the section of this notice entitled "Submission of Amendment," the Director solicited public comment and provided opportunity for a public hearing on the proposed amendments. No comments were received from the public during or after the comment period, which closed on April 27, 1987. Since no one requested an opportunity to testify, the public hearing scheduled for April 21, 1987 was cancelled.

Pursuant to 30 CFR 732.17(h)(10)(i) and section 503(b) of SMCRA, comments were also solicited from various Federal agencies with an actual or potential interest in the Virginia program. A summary of the comments received and their disposition appears below:

1. The Supervisor of the Jefferson National Forest sought reassurance that, for operations on Federal lands, coordination between OSMRE, the Commonwealth of Virginia and the Federal land management agency (FMLA) would not be affected by the amendment, and that the consent of the FMLA would still be required prior to any partial bond release. In response, the Director notes that nothing in the amendment alters interagency coordination requirements, nor does it change the provisions of the April 7, 1987 State-Federal cooperative agreement (52 FR 1104 *et seq.*) which governs the regulation of mining on Federal lands in Virginia. Part B of Article IX of this agreement specifies that the State shall obtain the concurrence of the FMLA prior to releasing the operator from any obligation under a bond.

2. The Environmental Protection Agency stated that early bond release, as provided under section 480–03–19.801.17(a), should never be allowed. The Director cannot agree with this statement since both section 519(c)(2) of SMCRA and the Federal regulations at 30 CFR 800.40(c)(2) contain provisions allowing partial bond release following the reestablishment of vegetation.

All other agency comments pertained to the remining amendment on which action is being deferred. These comments will be addressed in the final rule announcing the Director's decision on that amendment.

V. Director's Decision

Based on Finding 1 above, the Director is deferring action on the proposed amendment concerning alternate effluent limitations for the remining of previously mined areas with pollutional discharges until the concerns

of the U.S. Environmental Protection Agency can be addressed.

Based on Findings 2 and 3 above, the Director is approving the proposed amendments to sections 480–03–19.801.13(a)(2) and 480–03–19.801.17(a).

The Federal rules at 30 CFR Part 946 codifying decisions concerning the Virginia program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: August 10, 1987.

James W. Workman,

Deputy Director, Operations and Technical Services.

PART 946—VIRGINIA

30 CFR Part 946 is amended as follows:

1. The authority citation for Part 946 continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. In § 946.15, a new paragraph (t) is added to read as follows:

§ 946.15 Approval of regulatory program amendments.

* * * * *

(t) The following amendments to the Virginia permanent regulatory program, as submitted by letter dated January 16, 1987, are approved effective August 17, 1987: Revisions to the Virginia Coal Surface Mining Reclamation Regulations at 480–03–19.801.13(a)(2), which concerns self-bonding requirements for participants in the Coal Surface Mining Reclamation Fund, and at 480–03–19.801.17(a), which concerns bond release requirements for participants in this fund.

[FR Doc. 87-18676 Filed 8-14-87; 8:45 a.m.]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7 86-32]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Manatee County, the Coast Guard is changing the regulations governing the Anna Maria drawbridge between Anna Maria Island and the Bradenton Metropolitan area, Florida. This change is being made because vehicular traffic has increased. This action will accommodate the current needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on September 16, 1987.

FOR FURTHER INFORMATION CONTACT: Mrs. Zonia Reyes, Bridge Section, Seventh Coast Guard District, telephone (305) 536–4103.

SUPPLEMENTARY INFORMATION: On October 6, 1986, the Coast Guard published a proposed rule change concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated October 20, 1986. In each notice, interested persons were given until November 20, 1986, to submit their comments.

Drafting Information

The drafters of these regulations are Mrs. Zonia C. Reyes, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Comments

Five comments were received about the proposed change. One commenter supported the regulations as proposed; one stated that the proposal, though an inconvenience, could be tolerated. One commenter asked us to reconsider our proposal and recommended a statewide regulation limiting bridge openings to 30 minutes intervals. Two commenters objected to the proposal and asked that the bridge openings be limited to 30 minute intervals.

The Coast Guard has carefully considered the comments. Available highway traffic data and bridge opening statistics do not support the need to limit the frequency of bridge openings to 30 minute intervals. The final rule is unchanged from the proposed rule published on October 6, 1986, except for minor editorial revisions needed to ensure a consistent format for drawbridge regulations.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulation allows for tugs with tows to pass at any time. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g), 33 CFR 117.43.

2. Section 117.287(d)(2) is revised to read as follows:

§ 117.287 Gulf Intracoastal Waterway, Caloosahatchee River to Perdido River.

* * * * *

(d) * * *

(2) The draw of the Anna Maria (S.R. 64) bridge, mile 89.2, shall open on signal except that from 9 a.m. to 6 p.m. on Saturdays, Sundays, and federal holidays the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour. From December 1 to May 31, Monday through Friday, from 9 a.m. to 6 p.m. the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour.

* * * * *

Dated: August 4, 1987.

H.B. Thorsen,

Read Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard.

[FR Doc. 87-18720 Filed 8-14-87; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 165

[COTP Valdez, AK 87 01]

Safety Zone; Ammunition Island, Port Valdez, AL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: A Safety Zone is being established for the purpose of adding safety and security during the transporting and off loading of Military Class "A" explosives. This operation will not impede or add any hazards to normal port operations. The safety zone encompass both Ammunition Island and the Vessel moored thereto and while the vessel is in and outbound.

DATES: This regulation becomes effective on August 25, 1987. Comments on this regulation must be received on or before December 1, 1987.

ADDRESS: Comments should be mailed to Commander (m) Seventeenth, Coast Guard District, P.O. Box 3-5000, Juneau, AK 99802-1217.

The comments will be available for inspection and copying at the U.S. Coast Guard, Marine Safety Office, 1 Fidalgo Drive, Valdez, Alaska. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: CDR S.A. McCall (COTP) or LT B.S. Painter (CMSD) 907-835-4791.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rule making was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rule making procedures would have been impracticable.

The request for this regulation was not received until July 13, 1987, and there was not sufficient time remaining to publish a proposal in advance of the event for which the regulations is needed. Likewise, there was not sufficient time to provide for a delayed effective date.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "**ADDRESS**" in the preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and reasons for their comments. Based upon comments received, the regulation may be changed.

Drafting Information

The drafters of this regulation are Commander, Steve A. McCall, project officer, Marine Safety Office, Valdez AK, and LT Dave Shippert, project attorney, Seventeenth, Coast Guard District Legal Office.

Discussion of Regulation

Pearsey Marine will be transporting containerized Military Class "A" explosives into the port of Valdez, starting on August 25, 1987. This operation will occur once a month for the next 15 to 18 months. The 1330 yard safety zone around Ammunition Island, is to insure a safe blast effect area, recommended by the Department of Defense, Ammunition and Explosives Safety Standards Manual. The 200 yard safety zone around the vessel, is to insure safe passage of the vessel.

These regulations will be in effect only when explosives are being handled at Ammunition Island, and for the vessel transporting the explosives, while the vessel is transiting the Vessel Traffic System, both inbound and out bound from Ammunition Island. Notification of the vessels arrival into the Port of Valdez, will be published in the Notice to Mariners, Local Notice to Mariners and in the Local Valdez newspaper in advance of the vessels arrival.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.50-1(g), 6.04-1, 6.04-6 and 160.5.

2. Section 165.1703 is added to read as follows:

§ 165.1703 Ammunition Island, Port Valdez, Alaska.

(a) The waters within the following boundaries is a safety zone—the area within 1330 yards of Ammunition Island, latitude 61.07-5N, longitude 146.18W, and the vessel moored or anchored at Ammunition Island.

(b) The area 200 yards off the vessel navigating the Vessel Traffic system from abeam of Naked Island, maneuvering to approach, moor, unmoor at Ammunition Island, or the departure of the vessel from Ammunition Island.

(c) *Special regulation.* (1) Section 165.23 does not apply to paragraph (a) of this section, except when the vessel is moored to Ammunition Island.

(d) Effective August 25, 1987 Notice of vessels arrival will be made in the Notice to Mariners, Local Notice to Mariners and in the Local Valdez newspaper, prior to the vessel arrival.

Dated: July 22, 1987.

Steve A. McCall,

CDR U.S.C.G., Captain of the Port.

[FR Doc. 87-18724 Filed 8-14-87; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 22

[FRL-3210-8(a)]

Rules of Practice Governing the Administrative Assessment of Class II Civil Penalties Under the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is today promulgating an interim final rule establishing

procedures for its administrative assessment of "Class II" civil penalties under the Clean Water Act (CWA). The rule provides that EPA's administrative assessment of Class II penalties will be governed by EPA's Consolidated Rules of Practice for assessing administrative penalties, and by a supplemental rule relating specifically to Class II penalty assessments. EPA is taking this action in response to amendments to the CWA, made by the Water Quality Act of 1987, which authorizes the Administrator to assess administrative penalties for specified violations of the CWA. The authority granted to the Administrator to assess administrative penalties was made immediately effective upon the date of enactment of the Water Quality Act, which was February 4, 1987.

DATES: Comments on the interim final rule must be submitted on or before October 16, 1987. The interim final rule is effective September 16, 1987, and governs all proceedings for the assessment of a Class II administrative penalty under section 309(g) of the CWA for which an administrative complaint is filed after September 16, 1987. EPA will use this rule as guidance for conducting these proceedings prior to the date it becomes effective on an interim final basis.

ADDRESS: Persons may mail comments on the interim final rule to Gary C. Hess, Office of Enforcement and Compliance Monitoring (LE-134W), U.S. Environmental Protection Agency, Room 3211, 401 M Street, SW., Washington, DC 20460. Persons may inspect all comments and the complete record of this rule-making at that address during normal Agency working hours.

FOR FURTHER INFORMATION CONTACT: Gary C. Hess, Office of Enforcement and Compliance Monitoring (LE-134W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, 202-475-8183.

SUPPLEMENTARY INFORMATION: On February 4, 1987, section 309 of the CWA, 33 U.S.C. 1319, was amended by section 314 of the Water Quality Act, Pub. L. 100-4, to authorize the Administrator of EPA to assess administrative penalties for violations of the CWA. The amendments to section 309 created a new subsection 309(g) establishing two "classes" of administrative penalties, which differ with respect to procedure and potential maximum assessment. Class I administrative penalty proceedings are not subject to the Administrative Procedure Act, 5 U.S.C. 554, 556, and permit a maximum penalty of up to $25,000. Class I proceedings are not subject to the interim final procedures promulgated today. Class II administrative proceedings authorize a maximum penalty of $125,000 and are subject to the requirements of the Administrative Procedure Act, 5 U.S.C. 554, 556. Class II proceedings thus are similar to administrative proceedings which are employed by the Agency under other environmental statutes. Today's interim final rule applies solely to Class II administrative civil penalty proceedings.

EPA has promulgated Consolidated Rules of Practice, 40 CFR Part 22, governing the administrative assessment of penalties under other statutes administered by EPA subject to the requirements of the Administrative Procedure Act. The Consolidated Rules are designed to provide a common set of procedural rules for certain of EPA's administrative penalty programs, in order to reduce paperwork, inconsistency and the burden on persons regulated. See 45 FR 24360 (Apr. 9, 1980).

EPA has concluded that the Consolidated Rules of Practice should be used, on an interim final basis, as the procedural framework for Class II administrative penalty enforcement under the CWA. Accordingly, EPA is today promulgating a rule providing that the Consolidated Rules shall govern adjudicatory proceedings for the assessment of Class II administrative penalties under section 309(g) of the CWA.

In addition, section 309(g) of the CWA establishes requirements specifically related to public notice, comment, and petitions to set aside orders assessing penalties under section 309(g). Consequently EPA is today also promulgating, on an interim final basis, a rule that supplements the Consolidated Rules of Practice and that is applicable only to Class II civil penalty proceedings.

EPA is seeking comment on the interim final rule, particularly on the interim final supplemental rules of practice.

Statutory Requirements

Under section 309(g) of the CWA, a Class II penalty is assessed by the Administrator by an order made on the record after opportunity for a hearing. Under section 309(g)(1), the Administrator must also consult with the State in which the violation occurs prior to assessing the penalty. Accordingly, § 22.38(b) would codify this requirement in the Class II administrative penalty procedures.

Under section 309(g), the Administrator must provide public notice and reasonable opportunity to comment upon the proposed assessment. The section provides that, if a hearing on the proposed assessment is conducted, the Administrator shall give any citizen who commented on the proposed assessment a reasonable opportunity to be heard and to present evidence at the hearing. The section further provides that the Administrator shall give any person who comments on a proposed assessment notice of the order assessing a penalty. Under section 309(g), if no hearing is held, any person who commented on the proposed assessment may petition the Administrator to set aside the order and to provide a hearing on the penalty. In addition, section 309(g) provides that the Administrator must set aside the order and provide a hearing if the Administrator determines that the evidence presented by the petitioner is material and was not considered in the issuance of the order. Under section 309(g), if the Administrator denies a hearing, the Administrator shall provide to the petitioner, and publish in the **Federal Register**, notice of the reasons for the denial. Accordingly, § 22.38 (c), (d), and (f) would codify requirements related to public notice, comment and petitions, in the Class II administrative penalty procedures.

Subsection 309(g) did not change the procedures for issuing and enforcing administrative orders under other subsections of section 309. See section 309(g)(11). Accordingly, the rule promulgated today does not apply to or change the procedures for issuing or enforcing compliance orders issued by EPA under, for example, section 309(a) of the CWA.

Consolidated Rules of Practice

EPA has concluded that the Consolidated Rules of Practice, 40 CFR Part 22, are consistent with the statutory requirements regarding Class II penalties under section 309 of the CWA. Use of the Consolidated Rules on an interim basis will allow EPA to begin prompt implementation of the administrative penalty authority, using uniform procedures while satisfying the procedural and substantive requirements established by the CWA.

Under the Consolidated Rules, EPA will assess Class II penalties by an order made on the record after opportunity for a hearing. Before issuing such an order, EPA will give written notice to the person to be assessed the civil penalty by filing and service of a complaint under the Consolidated Rules. Under 40 CFR 22.15, the complaint will include a notice of the respondent's right

to request, within 20 days, a hearing on the complaint.

EPA will provide public notice, and reasonable opportunity to comment on the proposed assessment under the Consolidated Rules. If EPA conducts a hearing on the proposed assessment, EPA shall provide to any person who commented on the proposal a copy of the notice of hearing required by 40 CFR 22.21(b), and a copy of any final order assessing a penalty. Persons wishing to participate at a hearing may be heard and present evidence without right of cross examination or may move formally to intervene under 40 CFR 22.11. If no hearing is held, persons who commented on the proposed assessment may petition to set aside the order and to provide a hearing on the penalty.

Supplemental Rule

The interim final rule includes provisions which supplement the Consolidated Rules as they related to Class II penalties under the CWA. The rule provides that actions of the Administrator with respect to which judicial review could have been obtained under section 509(b)(1) of the CWA (for example, issuance of a waste water discharge permit) will not be subject to review in a Class II penalty assessment proceeding. The interim final supplemental rule makes clear that a person who is not a party to a penalty assessment proceeding may nevertheless comment on a proposed assessment. The supplemental rule requires that such persons file written comments with the regional hearing clerk and serve a copy of the comments upon each party. The supplemental rule confirms that a person wishing to intervene as a full party in a Class II penalty proceeding may move for leave to intervene under the Consolidated Rules. The supplemental rule also codifies requirements in section 309(g) of the CWA related to consultation with States, public notice, comment and petitions to set aside orders assessing penalties.

Interim Final Rule

EPA is issuing these rules on an interim final basis pursuant to 5 U.S.C. 553(b)(B), which permits the issuance of rules on an interim final basis for good cause which is published with the rule.

The good cause for interim final rule issuance is as follows: The statutory provision relating to Class II administrative proceedings became effective upon enactment. The type of Class II proceeding authorized by the Water Quality Act is similar to proceedings governed by the existing Consolidated Rules of Practice, which were subject to notice and comment. In the absence of an interim final rule, there could be uncertainty as to what procedural rules apply to Class II proceedings during the coming months. Accordingly, it is in the best interests of regulated entities, citizens and EPA to issue the rules applying the Part 22 procedures on an interim final basis with an opportunity for subsequent comment.

As explained above, the supplemental rules codify statutory requirements, establish procedural or practice rules, and establish that actions of the Administrator which are not subject to judicial review in a civil or criminal proceeding for enforcement are similarly binding in a Class II penalty assessment proceeding. Prompt promulgation of the supplemental rules will lessen confusion regarding practices and procedures in Class II penalty proceedings, and avoid the anomalous situation in which CWA obligations would be binding in a criminal prosecution or civil enforcement suit but not in a Class II penalty proceeding. Consequently, EPA finds that there is good cause to issue the supplemental rules on an interim final basis. Notice and comment procedures prior to issuance of the supplemental rule on an interim final basis are unnecessary and contrary to the public interest.

The interim final rule is effective thirty days after publication in the **Federal Register.** The Consolidated Rules of Practice will govern proceedings for the assessment of Class II administrative penalties under the CWA for which a complaint is filed after that date and will be used by EPA as guidance prior to that date.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment, a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities. This regulation will impose no significant costs on any small entities. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this proposed regulation will not have a significant impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

E.O. 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirements of a Regulatory Impact Analysis. This action does not constitute a "major" regulatory action because it will not have a major financial or adverse impact on the country. This regulation has been reviewed and cleared by the Office of Management and Budget as required by Executive Order 12291.

Dated: August 10, 1987.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, and under authority of 33 U.S.C. 1361, 40 CFR is amended on an interim basis effective September 16, 1987, as follows:

PART 22—[AMENDED]

1. The authority citation for Part 22 is revised to read as follows:

Authority: Sec. 16 of the Toxic Substances Control Act; secs. 211 and 301 of the Clean Air Act; secs. 14 and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act; secs. 105 and 108 of the Marine Protection, Research, and Sanctuaries Act; secs. 2002 and 3008 of the Solid Waste Disposal Act; and sec. 501 of the Clean Water Act.

2. Section 22.01 is amended by revising paragraph (a)(5) and by adding paragraph (a)(6) to read as follows:

§ 22.01 Scope of these rules.

(a) * * *

(5) The assessment of any civil penalty conducted under section 16(a) of the Toxic Substances Control Act (15 U.S.C. 2615(a));

(6) The assessment of any Class II penalty under section 309(g) of the Clean Water Act (33 U.S.C. 1319(g)).

* * * * *

3. Add a new § 22.38 to read as follows:

§ 22.38 Supplemental rules of practice governing the administrative assessment of Class II penalties under the Clean Water Act.

(a) *Scope of these Supplemental rules.* These Supplemental rules of practice shall govern, in conjunction with the preceding Consolidated Rules of Practice (40 CFR Part 22), administrative proceedings for the assessment of any Class II civil penalty under section 309(g) of the Clean Water Act (33 U.S.C. 1319(g)).

(b) *Consultation with States.* The Administrator will consult with the State in which the alleged violation occurs before assessing a Class II civil penalty.

(c) *Public notice.* Before issuing an order assessing a Class II civil penalty, the Administrator will provide public notice of the proposed issuance of such order.

(d) *Comment by a person who is not a party.* A person not a party to the Class II proceeding who wishes to comment upon a proposed assessment must file written comment with the Regional Hearing Clerk within thirty days after public notice of the proposed order and serve a copy of the comment upon each party. For good cause shown the Administrator, the Regional Administrator or the Presiding Officer, as appropriate, may accept late comments. The Administrator will give any person who comments on a proposed assessment notice of any hearing and notice of the order assessing a penalty. Although commenters may be heard and present evidence at any hearing held pursuant to section 309(g) of the Act, commenters shall not be accorded party status with right of cross examination unless they formally move to intervene and are granted party status under § 22.11.

(e) *Administrative procedure and judicial review.* Action of the Administrator with respect to which review could have been obtained under section 509(b)(1) of the Act shall not be subject to review in an administrative proceeding for the assessment of a Class II civil penalty under section 309(g).

(f) *Petitions to set aside an order and to provide a hearing.* If no hearing is held before issuance of an order assessing a Class II civil penalty, any person who commented on the proposed assessment may petition, within 30 days after issuance of the order, the Administrator to set aside the order and to provide a hearing on the penalty. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Administrator will immediately set aside such order and provide a hearing in accordance with the Consolidated Rules of Practice and these Supplemental rules of practice. If the Administrator denies a hearing under section 309(g)(4)(C) of the Act, the Administrator will provide to the petitioner, and publish in the **Federal Register**, notice of and the reasons for such denial.

[FR Doc. 87-18599 Filed 8-14-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 60

[AD-FRL 3215-1]

Standards of Performance for New Stationary Sources; Determination of Carbon Monoxide Emissions in Certifying Continuous Emission Monitoring Systems at Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Method 10A, "Determination of Carbon Monoxide Emissions in Certifying Continuous Emission Monitoring Systems at Petroleum Refineries," was proposed in the **Federal Register** on July 2, 1986 (51 FR 24164). This action promulgates Method 10A, which is to be added to Appendix A of 40 CFR Part 60. The intended effect is to prescribe Method 10A for use in the relative accuracy (RA) testing of nondispersive infrared (NDIR) continuous emission monitoring systems (CEMS's) at petroleum refineries.

Under section 301(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before October 16, 1987. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

EFFECTIVE DATE: August 17, 1987.

ADDRESSES: *Docket.* Docket No. A-86-04, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Foston Curtis or Roger Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-2237.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

Method 10A prescribes the collection of an integrated bag sample that is analyzed spectrophotometrically after carbon monoxide (CO) in the sample is reacted with p-sulfaminobenzoic acid.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Rather, the rulemaking would simply add a test method associated with emission measurement requirements that would apply irrespective of this rulemaking.

II. Significant Comments and Changes to the Proposed Test Method

One comment letter was received from the proposal of Method 10A. The letter addressed two areas of concern. The comments and the Agency's responses are summarized here along with subsequent method changes.

The commenter did not think it inappropriate to use Method 10 as the reference method (RM) for RA tests on CEMS's which operate by the NDIR principle. It was recommended that Method 10 be allowed as an alternative to Method 10A for the following reasons:

(a) Redundancy is not a sound technical reason for disallowing the use of Method 10, especially if Methods 10 and 10A give equivalent results.

(b) Method 10 is a proven method that is easy to perform, reasonable in cost, and within the capability of many consultants. Method 10A is more complicated and cumbersome, costs more to perform, and fewer consultants will have the capability to perform it than Method 10.

We basically agree with the commenter's reasoning. Our original reservations were based upon the potential for biasing effects from gas stream interferences that may not be detected when comparing methods operating on the same principle. A recent study has shown that this is resolved when Method 10 is equipped with the Method 10A scrubber system. The EPA intends to propose to allow Method 10 as an acceptable RM for the the RA testing of NDIR CEMS's when the Method 10A scrubber system is used in place of the current scrubber system.

The commenter was also concerned about the stability of samples held in Tedlar bags for up to a month before analysis. It was felt that the 1-month maximum holding time specified in Method 10A was contrary to the 4- to 8-hour maximum holding time specified in Method 3. It was also pointed out that, although not specified in Method 10, many EPA regions are imposing a 24-hour holding time limit for bag samples. It was felt the 1-month maximum was too long and recommended that EPA reevaluate the holding time criteria and establish a reasonable limit.

The 4- to 8-hour holding limits for determining dry molecular weight and emission rate correction factors by Method 3 were chosen in light of analyzing multiple gas components with a portable instrument in the field. In this situation, the expedient analysis of the bag sample is desired and practicable. For the analysis of a single component gas where difficulty would be experienced in setting up the analytical equipment on site, a relatively longer holding time is needed. It has been shown in an EPA study that bag samples analyzed on site and again 6 weeks later experienced no CO losses. A typical field test which normally requires a shorter sample holding interval should experience the same stability. Since a 1-week period is a reasonable time to transport field samples to the laboratory, Method 10A will recommend that sample analysis be performed within 1 week of collection.

III. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated test method and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review [section 307(d)(7)(A)].

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis. The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this test method imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

This rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* This rulemaking does not impose any additional emission measurement requirements on facilities affected by this rulemaking. Rather, this rulemaking adds an alternative test method associated with emission measurement requirements that would apply irrespective of this rulemaking.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the promulgated rule will not have any impact on small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Petroleum refineries, Reporting and recordkeeping requirements, Incorporation by reference.

Date: August 7, 1987.

Lee M. Thomas,

Administrator.

40 CFR Part 60 is amended as follows:

PART 60—[AMENDED]

1. The authority for 40 CFR Part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, and 301 of the Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

Appendix B [Amended]

2. In Appendix B, Performance Specification 4 is amended by revising Section 3.2 to read as follows:

3.2 Reference Methods. Unless otherwise specified in an applicable subpart of the regulation, Method 10A, or its approved alternative, is the RM for CEMS's using nondispersive infrared (NDIR) analyzers, and Method 10 is the RM for those CEMS's not using an NDIR.

Appendix A—Reference Methods

3. By adding Method 10A to Appendix A as follows:

Method 10A—Determination of Carbon Monoxide Emissions in Certifying Continuous Emission Monitoring Systems at Petroleum Refineries

1. Applicability and Principle

1.1 Applicability. This method applies to the measurement of carbon monoxide (CO) at petroleum refineries. This method serves as the reference method in the relative accuracy test for nondispersive infrared (NDIR) CO continuous emission monitoring systems (CEMS's) that are required to be installed in petroleum refineries on fluid catalytic cracking unit catalyst regenerators [40 CFR Part 60.105(a)(2)].

1.2 Principle. An integrated gas sample is extracted from the stack, passed through an alkaline permanganate solution to remove sulfur and nitrogen oxides, and collected in a Tedlar bag. The CO concentration in the sample is measured spectrophotometrically using the reaction of CO with p-sulfaminobenzoic acid.

1.3. Range and Sensitivity.

1.3.1 Range. Approximately 3 to 1800 ppm CO. Samples having concentrations below 400 ppm are analyzed at 425 nm, and samples having concentrations above 400 ppm are analyzed at 600 nm.

1.3.2 Sensitivity. The detection limit is 3 ppm based on three times the standard deviation of the mean reagent blank values.

1.4 Interferences. Sulfur oxides, nitric oxide, and other acid gases interfere with the colorimetric reaction. They are removed by passing the sampled gas through an alkaline potassium permanganate scrubbing solution. Carbon dioxide (CO_2) does not interfere, but, because it is removed by the scrubbing solution, its concentration must be measured independently and an appropriate volume correction made to the sampled gas.

1.5 Precision, Accuracy, and Stability.

1.5.1 Precision. The estimated intralaboratory standard deviation of the method is 3 percent of the mean for gas samples analyzed in duplicate in the concentration range of 39 to 412 ppm. The interlaboratory precision has not been established.

1.5.2 Accuracy. The method contains no significant biases when compared to an NDIR analyzer calibrated with National Bureau of Standards (NBS) standards.

1.5.3 Stability. The individual components of the colorimetric reagent are stable for at least 1 month. The colorimetric reagent must be used within 2 days after preparation to avoid excessive blank correction. The samples in the Tedlar [1] bag should be stable for at least 1 month if the bags are leak-free.

2. Apparatus

2.1 Sampling. The sampling train is shown in Figure 10A-1, and component parts are discussed below:

[1] Mention of trade names or commercial products in this publication does not constitute the endorsement or recommendation for use by the Environmental Protection Agency.

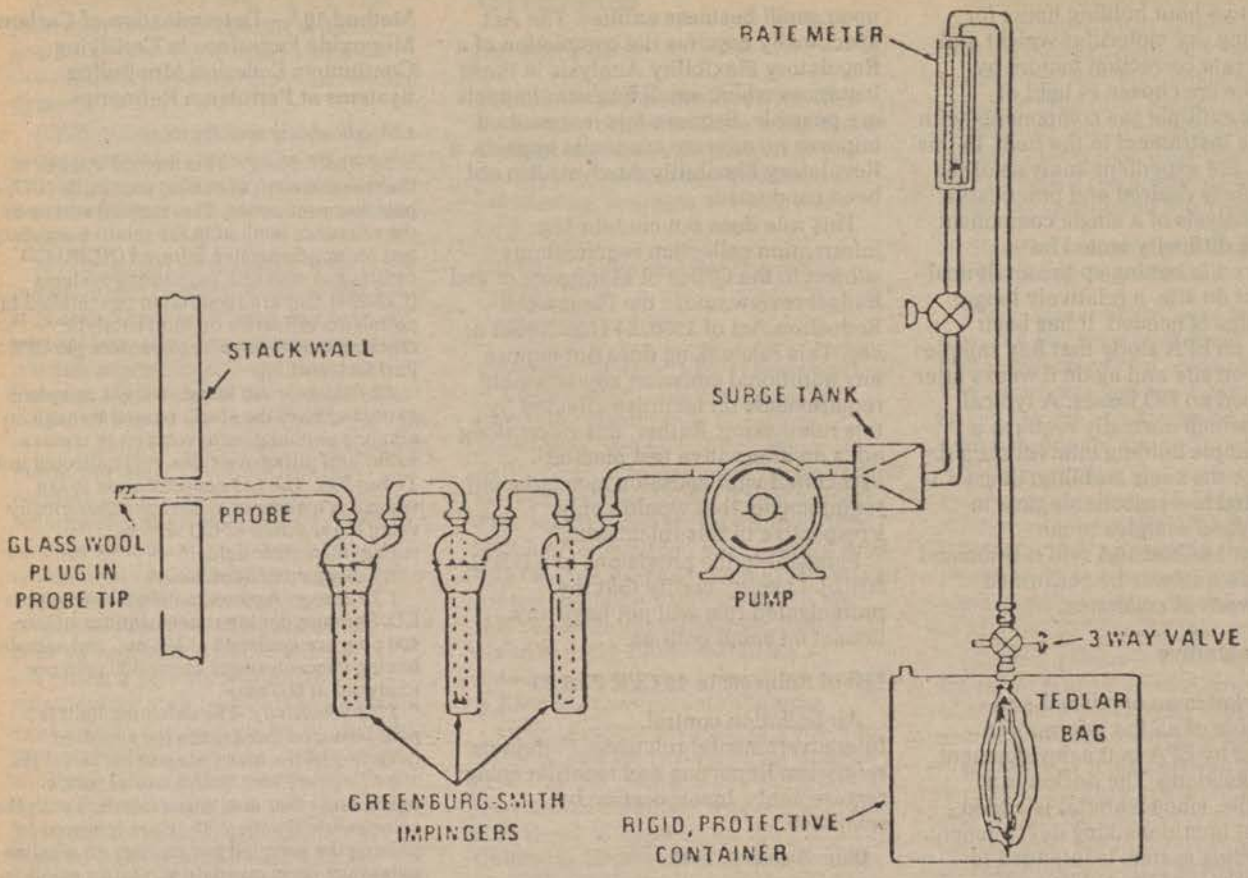


Figure 10A-1. Sampling train.

2.1.1 Probe. Stainless steel, sheathed Pyrex glass, or equivalent, equipped with a glass wool plug to remove particulate matter.

2.1.2 Sample Conditioning System. Three Greenburg-Smith impingers connected in series with leak-free connections.

2.1.3 Pump. Leak-free pump with stainless steel and Teflon parts to transport sample at a flow rate of 300 ml/min to the flexible bag.

2.1.4 Surge Tank. Installed between the pump and the rate meter to eliminate the pulsation effect of the pump on the rate meter.

2.1.5 Rate Meter. Rotameter, or equivalent, to measure flow rate at 300 ml/min. Calibrate according to Section 5.2.

2.1.6 Flexible Bag. Tedlar, or equivalent, with a capacity of 10 liters and equipped with a sealing quick-connect plug. The bag must be leak-free according to Section 4.1. For protection, it is recommened that the bag be enclosed with a rigid container.

2.1.7 Valves. Stainless-steel needle valve to adjust flow rate, and stainless-steel three-way valve, or equivalent.

2.1.8 CO_2 Analyzer. Method 3 or its approved alternative to measure CO_2 concentration to within 0.5 percent.

2.1.9 Volume Meter. Dry gas meter, calibrated and capable of measuring the sample volume under rotameter calibration conditions of 300 ml/min for 10 minutes.

2.1.10 Pressure Gauge. A water filled U-tube manometer, or equivalent, of about 28 cm (12 in.) to leak-check the flexible bag.

2.2 Analysis.

2.2.1 Spectrophotometer. Single- or double-beam to measure absorbance at 425 and 600 nm. Slit width should not exceed 20 nm.

2.2.2 Spectrophotometer Cells. 1-cm pathlength.

2.2.3 Vacuum Gauge. U-tube mercury manometer, 1 meter (39 in.), with 1-mm divisions, or other gauge capable of measuring pressure to within 1 mm Hg.

2.2.4 Pump. Capable of evacuating the gas reaction bulb to a pressure equal to or less than 40 mm Hg absolute, equipped with coarse and fine flow control valves.

2.2.5 Barometer. Mercury, aneroid, or other barometer capable of measuring atmospheric pressure to within 1 mm Hg.

2.2.6 Reaction Bulbs. Pyrex glass, 100-ml with Teflon stopcock (Figure 10A–2), leak-free at 40 mm Hg, designed so that 10 ml of the colorimetric reagent can be added and removed easily and accurately. Commercially available gas sample bulbs such as Supelco Catalog No. 2–2161 may also be used.

BILLING CODE 6560-50-M

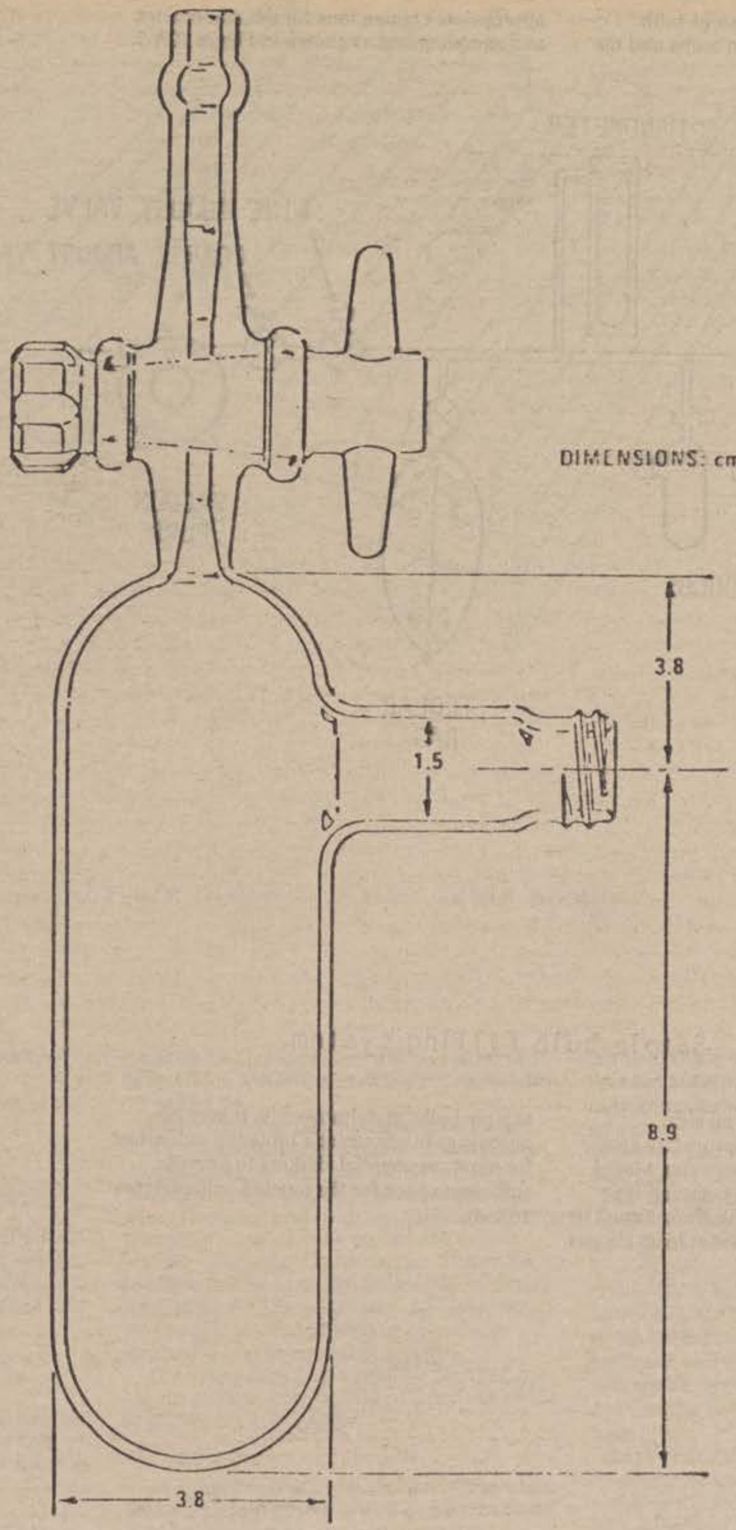


Figure 10A-2. Sample reaction bulbs.

BILLING CODE 6560-50-C

2.2.7 Manifold. Stainless steel, with connections for three reaction bulbs and the appropriate connections for the manometer and sampling bag as shown in Figure 10A-3.

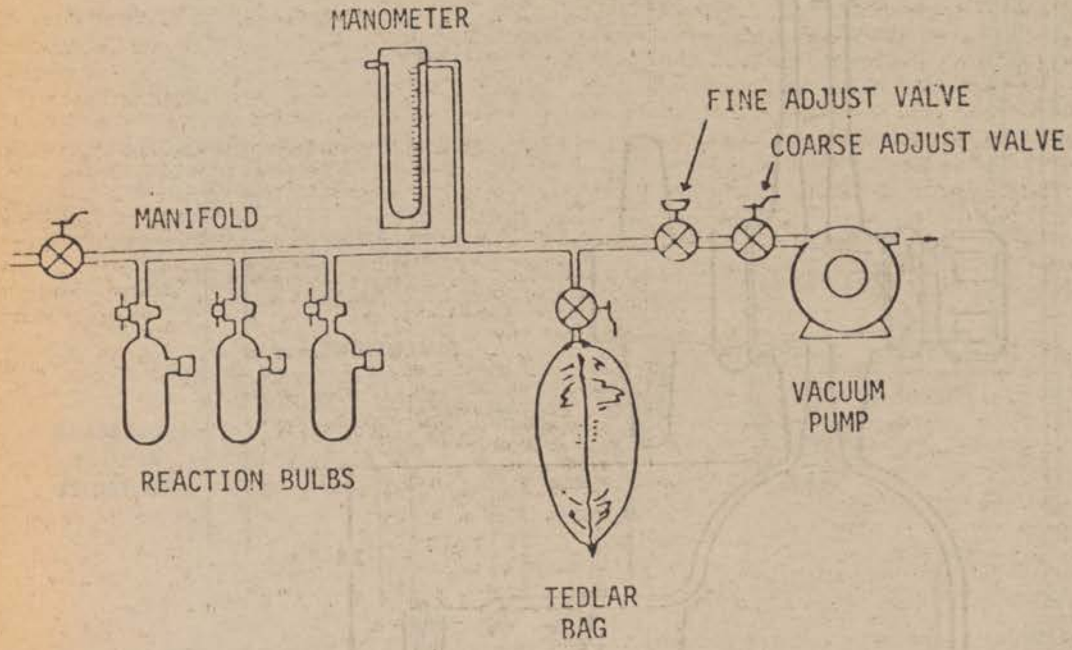


Figure 10A-3. Sample bulb filling system.

2.2.8 Pipets. Class A, 10-ml size.

2.2.9 Shaker Table. Reciprocating-stroke type such as Eberbach Corporation, Model 6015. A rocking arm or rotary-motion type shaker may also be used. The shaker must be large enough to accommodate at least six gas sample bulbs simultaneously. It may be necessary to construct a table top extension for most commercial shakers to provide sufficient space for the needed bulbs (Figure 10A–4).

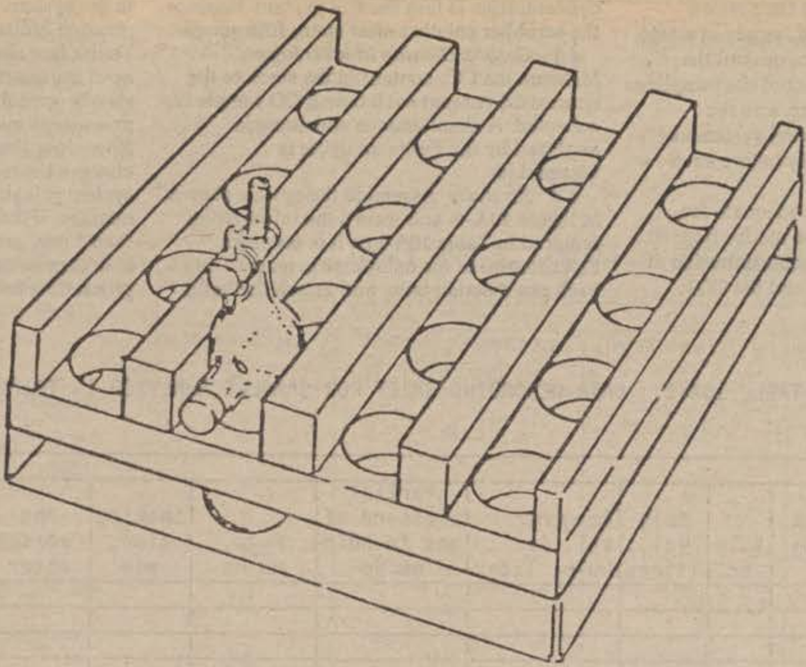


Figure 10A-4. Shaker table adapter.

2.2.10 Valve. Stainless steel shut-off valve.

2.2.11 Analytical Balance. Capable of accurately weighing to 0.1 mg.

3. Reagents

Unless otherwise indicated, all reagents shall conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available, otherwise, the best available grade shall be used.

3.1 Sampling.

3.1.1 Water. Deionized distilled, as described in Method 6, Section 3.1.1.

3.1.2 Alkaline Permanganate Solution, 0.25 M $KMnO_4$/1.5 M NaOH. Dissolve 40 g $KMnO_4$ and 60 g NaOH in water, and dilute to 1 liter.

3.2 Analysis.

3.2.1 Water. Same as in Section 3.1.1.

3.2.2 1 M Sodium Hydroxide (NaOH) Solution. Dissolve 40 g NaOH in approximately 900 ml of water, cool, and dilute to 1 liter.

3.2.3 0.1 M Silver Nitrate ($AgNO_3$) Solution. Dissolve 8.5 g $AgNO_3$ in water, and dilute to 500 ml.

3.2.4 0.1 M Para-Sulfaminobenzoic Acid (p-SABA) Solution. Dissolve 10.0 g p-SABA in 0.1 M NaOH (prepared by diluting 50 ml of 1 M NaOH to 500 ml), and dilute to 500 ml with 0.1 M NaOH.

3.2.5 Colorimetric Solution. To a flask, add 100 ml of p-SABA solution and 100 ml of $AgNO_3$ solution. Mix, and add 50 ml of 1 M NaOH with shaking. The resultant solution should be clear and colorless. This solution is acceptable for use for a period of 2 days.

3.2.6 Standard Gas Mixtures. Traceable to NBS standards and containing between 50 and 1000 ppm CO in nitrogen. At least two concentrations are needed to span each calibration range used (Section 5.3).

The calibration gases shall be certified by the manufacturer to be within 2 percent of the specified concentrations.

4. Procedure

4.1 Sample Bag Leak-checks. While a bag leak-check is required after bag use, it should also be done before the bag is used for sample collection. The bag should be leak-checked in the inflated and deflated condition according to the following procedures.

Connect the bag to a water manometer, and pressurize the bag to 5 to 10 cm H_2O (2 to 4 in. H_2O). Allow the bag to stand for 60 minutes. Any displacement in the water manometer indicates a leak. Now, evacuate the bag with a leakless pump that is connected on the downstream side of a flow-indicating device such as a 0-to 100-ml/min rotameter or an impinger containing water. When the bag is completely evacuated, no flow should be evident if the bag is leak-free.

4.2 Sampling. Evacuate the Tedlar bag completely using a vacuum pump. Assemble the apparatus as shown in Figure 10A-1. Loosely pack glass wool in the tip of the probe. Place 400 ml of alkaline permanganate solution in the first two impingers and 250 ml in the third. Connect the pump to the third impinger, and follow this with the surge tank, rate meter, and three-way valve. Do not connect the Tedlar bag to the system at this time.

Leak-check the sampling system by placing a vacuum gauge at or near the probe inlet, plugging the probe inlet, opening the three-way valve, and pulling a vacuum of approximately 250 mm Hg on the system while observing the rate meter for flow. If flow is indicated on the rate meter, do not proceed further until the leak is found and corrected.

Purge the system with sample gas by inserting the probe into the stack and drawing sample through the system at 300 ml/min + 10 percent for 5 minutes. Connect

the evacuated Tedlar bag to the system, record the starting time, and sample at a rate of 300 ml/min for 30 minutes, or until the Tedlar bag is nearly full. Record the sampling time, the barometric pressure, and the ambient temperature. Purge the system as described above immediately before each sample.

The scrubbing solution is adequate for removing sulfur and nitrogen oxides from 50 liters of stack gas when the concentration of each is less than 1,000 ppm and the CO_2 concentration is less than 15 percent. Replace the scrubber solution after every fifth sample.

4.3 Carbon Dioxide Measurement. Measure the CO_2 content in the stack to the nearest 0.5 percent each time a CO sample is collected. A simultaneous grab sample analyzed by the Fyrite analyzer is acceptable.

4.4 Analysis. Assemble the system shown in Figure 10A–3, and record the information required in Table 10A-1 as it is obtained. Pipet 10.0 ml of the colorimetric reagent into each gas reaction bulb, and attach the bulbs to the system. Open the stopcocks to the reaction bulbs, but leave the valve to the Tedlar bag closed. Turn on the pump, fully open the coarse-adjust flow valve, and slowly open the fine-adjust valve until the pressure is reduced to at least 40 mm Hg. Now close the coarse adjust valve, and observe the manometer to be certain that the system is leak-free. Wait a minimum of 2 minutes. If the pressure has increased less than 1 mm, proceed as described below. If a leak is present, find and correct it before proceeding further.

TABLE 10A-1. DATA RECORDING SHEET FOR SAMPLES ANALYZED IN TRIPLICATE

Sample no./ Type	Room temp, °C	Stack % CO_2	Bulb no.	Bulb vol., liters	Reagent vol. in bulb, liter	Partial pressure of gas in bulb mm Hg	P_{bar}, mm Hg	Shaking time, min	Abs versus water	$A - A_r$	A_s	Avg. A_s
Blank												
Std. 1												
Std. 2												
Sample 1												
Sample 2												
Sample 3												

Record the vacuum pressure (P_v) to the nearest 1 mm Hg, and close the reaction bulb stopcocks. Open the Tedlar bag valve, and allow the system to come to atmospheric pressure. Close the bag valve, open the pump coarse adjust valve, and evacuate the system again. Repeat this fill/evacuation procedure at least twice to flush the manifold completely. Close the pump coarse adjust valve, open the Tedlar bag valve, and let the system fill to atmospheric pressure. Open the stopcocks to the reaction bulbs, and let the entire system come to atmospheric pressure. Close the bulb stopcocks, remove the bulbs, record the room temperature and barametric pressure (P_{bar}, to nearest mm Hg), and place the bulbs on the shaker table with their main axis either parallel to or perpendicular to the plane of the table top. Purge the bulb-filling system with ambient air for several minutes between samples. Shake the samples for exactly 2 hours.

Immediately after shaking, measure the absorbance (A) of each bulb sample at 425 nm if the concentration is less than or equal to 400 ppm CO or at 600 nm if the concentration is above 400 ppm. This may be accomplished with multiple bulb sets by sequentially collecting sets and adding to the shaker at staggered intervals, followed by sequentially removing sets from the shaker for absorbance measurement after the two-hour designated intervals have elapsed.

Use a small portion of the sample to rinse a spectrophotometer cell several times before taking an aliquot for analysis. If one cell is used to analyze multiple samples, rinse the cell several times between samples with water.

Prepare and analyze standards and a reagent blank as described in Section 5.3. Use water as the reference. Reject the analysis if the blank absorbance is greater than 0.1. All conditions should be the same for analysis of samples and standards. Measure the absorbances as soon as possible after shaking is completed. Determine the CO concentration of each bag sample using the calibration curve for the appropriate concentration range as discussed in Section 5.3.

5. Calibration

5.1 *Bulb Calibration.* Weigh the empty bulb to the nearest 0.1 g. Fill the bulb to the stopcock with water, and again weigh to the nearest 0.1 g. Subtract the tare weight, and calculate the volume in liters to three significant figures using the density of water (at the measurement temperature). Record the volume on the bulb; alternatively, mark an identification number on the bulb, and record the volume in a notebook.

5.2 Rate Meter Calibration. Assemble the system as shown in Figure 10A–1 (the impingers may be removed), and attach a volume meter to the probe inlet. Set the rotameter at 300 ml/min, record the volume meter reading, start the pump, and pull gas through the system for 10 minutes. Record the final volume meter reading. Repeat the procedure and average the results to determine the volume of gas that passed through the system.

5.3 Spectrophotometer Calibration Curve. The calibration curve is established by taking at least two sets of three bulbs of known CO collected from Tedlar bags through the analysis procedure. Reject the standard set where any of the individual bulb absorbances differ from the set mean by more than 10 percent. Collect the standards as described in Section 4.2. Prepare standards to span the 0- to 400- to 1000-ppm range. If any samples span both concentration ranges, prepare a calibration curve for each range. A set of three bulbs containing colorimetric reagent but no CO should serve as a reagent blank and be taken through the analysis procedure.

Calculate the average absorbance for each set (3 bulbs) of standards using 10A–1 and Table 10A–1. Construct a graph of average absorbance for each standard against its corresponding concentration in ppm. Draw a smooth curve through the points. The curve should be linear over the two concentration ranges discussed in Section 1.3.1.

6. Calculations

Carry out calculations retaining at least one extra decimal figure beyond that of the acquired data. Round off figures after final calculation.

6.1 Nomenclature.

A=Sample absorbance, uncorrected for the reagent blank.
A_r=Aborbance of the reagent blank.
A_s=Average sample absorbance per liter, units/liter.
B_w=Moisture content in the bag sample.
C=CO concentration in the stack gas, dry basis, ppm.
C_b=CO concentration of the bag sample, dry basis, ppm.
C_g=CO concentration from the calibration curve, ppm.
F=Volume fraction of CO_2 in the stack.
n=Number of reaction bulbs used per bag sample.
P_{bar}=Barometric pressure, mm Hg.
P_v=Residual pressure in the sample bulb after evacuation, mm Hg.
P_w=Vapor pressure of H_2O in the bag (from Table 10A–2), mm Hg.
V_b=Volume of the sample bulb, liters.
V_r=Volume of reagent added to the sample bulb, 0.0100 liter.

6.2 Average Sample Absorbance per Liter.

Average the three absorbance values for each bulb set. Then calculate A_s for each set of gas bulbs using Equation 10A–1. Use A_s to determine the CO concentration from the calibration curve (C_g).

$$A_s = \frac{(A - A_r)(P_{bar})}{(V_b - V_r)(P_{bar} - P_v)} \qquad \text{Eq. 10A–1}$$

Note: A and A_r must be at the same wavelength.

6.3 CO Concentration in the Bag.

Calculate C_b using Equations 10A–2 and 10A–3. If condensate is visible in the Tedlar bag, calculate B_w using Table 10A–2 and the temperature and barometric pressure in the analysis room. If condensate is not visible, calculate B_w using the temperature and barometric pressure recorded at the sampling site.

$$B_w = \frac{P_w}{P_{bar}} \qquad \text{Eq. 10A–2}$$

$$C_b = \frac{C_g}{(1 - B_w)} \qquad \text{Eq. 10A–3}$$

6.4 CO Concentration in the Stack.

$$C = \frac{C_b}{(1 - F)} \qquad \text{Eq. 10A–4}$$

TABLE 10A-2. MOISTURE CORRECTION

Temperature, °C	Vapor pressure of H_2O, mm Hg	Temperature, °C	Vapor pressure of H_2O, mm Hg
4	6.1	18	15.5
6	7.0	20	17.5
8	8.0	22	19.8
10	9.2	24	22.4
12	10.5	26	25.2
14	12.0	28	28.3
16	13.6	30	31.8

7. Bibliography

1. Butler, F.E., J.E. Knoll, and M.R. Midgett. Development and Evaluation of Methods for Determining Carbon Monoxide Emissions. Quality Assurance Division, Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. June 1985. 33 p.

2. Ferguson, B.B., R.E. Lester, and W.J. Mitchell. Field Evaluation of Carbon Monoxide and Hydrogen Sulfide Continuous Emission Monitors at an Oil Refinery. U.S. Environmental Protection Agency. Research Triangle Park, NC. Publication No. EPA–600/4–82–054. August 1982. 100 p.

3. Lambert, J.L., and R.E. Weins. Induced Colorimetric Method for Carbon Monoxide. Analytical Chemistry. *46*(7):929–930. June 1974.

4. Levaggi, D.A., and M. Feldstein. The Colorimetric Determination of Law Concentrations of Carbon Monoxide. Industrial Hygiene Journal. *25*:64–66. January-February 1964.

5. Repp, M. Evaluation of Continuous Monitors for Carbon Monoxide in Stationary Sources. U.S. Environmental Protection Agency. Research Triangle Park, NC. Publication No. EPA–600/2–77–063. March 1977. 155 p.

6. Smith, F., D.E. Wagoner, and R.P. Donovan. Guidelines for Development of a Quality Assurance Program: Volume VIII—Determination of CO Emissions from Stationary Sources by NDIR Spectrometry. U.S. Environmental Protection Agency. Research Triangle Park, NC. Publication No. EPA–650/4–74–005–h. Febraury 1975. 96 p.

[FR Doc. 87–18598 Filed 8–14–87; 8:45 a.m.]
BILLING CODE 6560-50-M

40 CFR Part 271

[SW–FRL–3248–2]

Schedule of Compliance for Modification of South Carolina's Hazardous Waste Program

AGENCY: Environmental Protection Agency, Region IV.

ACTION: Notice of South Carolina's compliance schedule to adopt program modifications.

SUMMARY: On September 22, 1986, EPA promulgated amendments to the deadlines for State program modifications, and published requirements for States to be placed on a compliance schedule to adopt the necessary program modifications. EPA is today publishing a compliance schedule for South Carolina to modify its program in accordance with § 271.21(g) to adopt the Federal program modifications.

FOR FURTHER INFORMATION CONTACT: Mr. Otis Johnson, Chief, Waste Planning Section, RCRA Branch, Waste Management Division, EPA Region IV, 345 Courtland Street, NE, Atlanta, GA 30365.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement (section 3006(b), 42 U.S.C. 6226(b)). EPA regulations for final authorization appear at 40 CFR 271.1–271.24. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986, for a complete discussion of these procedures and deadlines.

B. South Carolina

South Carolina received final authorization of its hazardous waste program on November 22, 1985. Federal Register 46437, November 8, 1985, Vol. 50, No. 217.

Today EPA is publishing a compliance schedule for South Carolina to obtain program revisions for the following Federal program requirements:

- Availability of Information, section 3006(f)
- Modifications in the Federal Program for Non-HSWA Cluster I including:

A. Uniform National Manifest, 49 FR 10490–10510
B. Interim Status Standards, 49 FR 46095
C. Redefinition of Solid Waste, 50 FR 614–668
D. Interim Status Standards for Landfills, 50 FR 16044–16048
E. Chlorinated Aliphatic Hydrocarbon Listing, 49 FR 5308
F. Permit Rules Settlement Agreement, 49 FR 17716

The State has agreed to seek the needed program modifications according to the following schedule:

Board approved notice of intent to draft regulations, May 20, 1987
Notice of intent to draft regulations published in State Register, May 21, 1987
Completion of preparation and typing of regulation revisions, July 15, 1987
Submission of draft application to EPA, July 15, 1987
Receipt of comments from EPA, August 14, 1987
Present regulation changes to Board for approval to notice regulations for public comment & hearing, September 19, 1987
Notice amended regulations for public comment & public hearing in State Register, September 25, 1987
Hold public hearing, October 26, 1987
Approval of regulations by Board, November 26, 1987
Notice approved regulations in State Register, November 26, 1987
Submission of Final Program Authorization Application for Non-HSWA Cluster I, December 1, 1987

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926 and 6974(B).

Date: July 10, 1987.

Lee A. De Hihns III,

Acting Regional Administrator.

[FR Doc. 87-18710 Filed 8-14-87; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 271

[SW-FRL-3248-3]

Schedule of Compliance for Modification of Tennessee's Hazardous Waste Program

AGENCY: Environmental Protection Agency, Region IV.

ACTION: Notice of Tennessee's compliance schedule to apply for program modifications.

SUMMARY: On September 22, 1986 EPA promulgated amendments to the deadlines for State program modifications and published requirements for States to be placed on a compliance schedule to adopt the necessary program modifications. EPA is today publishing a compliance schedule for Tennessee to modify its program in accordance with § 271.21(g) to adopt the Federal program modifications.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Chief, Waste Planning Section, RCRA Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365, (404) 347-3016.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6226(b)). EPA regulations for final authorization appear at 40 CFR 271.1 through 271.24. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986 for a complete discussion of these procedures and deadlines.

B. Tennessee

Tennessee received final authorization of its hazardous waste program on February 5, 1985. (50 FR 2820, January 22, 1985). Today EPA is publishing a compliance schedule for Tennessee to submit an application to obtain program revisions for the following Federal program requirements:

Biennial Report
Interim Status Standards—Applicability
Chlorinated Aliphatic Hydrocarbon Listing
Permit Rules—Settlement Agreement
Listing Warfarin & Zinc Phosphide
Lime Stabilized Pickle Liquor Sludge
Exclusion of Household Waste
Interim Status Standards—Applicability
Corrections to Test Methods Manual
Satellite Accumulation
Redefinition of Solid Waste
Interim Status Standards for Landfills.

The State has already adopted all the above provisions with the exception of the Listing of Warfarin and Zinc Phosphide. This provision will become effective in November 1987.

Tennessee expects to submit an application to EPA for authorization of the above mentioned program revisions by December 31, 1987.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act,

as amended by the RCRA of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(B).

Date: August 3, 1987.

Lee A. DeHihns III,

Acting Regional Administrator.

[FR Doc. 87-18711 Filed 8-14-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 80, 81, 82 and 83

Crime Insurance Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: These revisions to the Federal Crime Insurance Program achieve the following: redefine the definition of "burglary" under the residential policy; revise residential crime insurance rates to permit the purchase of crime insurance in increments of $1,000, up to the maximum limit of $10,000; permit a premium discount on the residential policy for the installation of an alarm system, revise the classification and alarm requirements of several commercial risks; eliminate coverage for loss from a night depository in a bank; and require the payment of an installment service charge on policies where the annual premium is not paid in full at the time of application.

EFFECTIVE DATE: September 16, 1987.

FOR FURTHER INFORMATION CONTACT: Robert J. DeHenzel, Federal Emergency Management Agency, Federal Insurance Administration, Donohoe Building, 500 C Street, SW., Room 433, Washington, DC 20472, Telephone number (202) 646-3440.

SUPPLEMENTARY INFORMATION: On May 8, 1987, FEMA published for comment in the **Federal Register** (Vol. 52, Page 17415) a proposed rule containing revision to the existing regulation as follows:

Section 83.4 Residential Crime Insurance Rates is being revised to permit the purchase of residential crime insurance in increments of $1,000 up to the maximum limit of $10,000, [$1,000, $2,000, $3,000, $4,000, $5,000 $6,000, $7,000, $8,000, $9,000, $10,000]. These new limits of coverage will permit applicants to purchase residential crime insurance coverage that is more closely aligned with their exposure to loss. That is, an applicant with a $4,000 maximum exposure will be able to purchase $4,000 coverage and not be required to buy $5,000 of coverage. Changes to the policy limits offered under the residential policy will be applied to all residential policies in force on the date the regulations become effective. While residential rates have not been increased, the program change under this section of the regulations reflects a reduction in premium for current policyholders with coverage limits of $1,000 $3,000, $5,000 and $7,000. Due to the administrative expense associated with the cancellation and rewrite of coverage to effect a lower rate, § 81.7a of the regulations dealing with cancellations is being revised to prohibit a cancellation and renewal of a policy when rates are reduced or increased. Policyholders will not be permitted to cancel and rewrite coverage due to any reduction in premium, however, their coverage will automatically be increased to a higher limit of coverage when these regulations are promulgated by a final rule-making process. Paragraph (b) of § 81.7a of the regulations is being removed since this paragraph deals with commissions paid to an insured's agent during a cancellation to obtain new coverage at lower rates and is no longer applicable.

Further, the commercial classification of risk schedule and alarm requirements is being revised and coverage from a bank night depository eliminated. Coverage from an night depository is being eliminated based on the number of losses sustained by the program over the past several years. One account submitted 24 losses over the past several years and 22 losses were attributed to theft from a night depository. Since 1977, this account paid premiums of $43,882 and had incurred losses of $447,888.

The commercial rating plan promulgated in 1965 permits the Administrator to adjust both the classification of risk and alarm requirement without adjusting the program's base commercial rates. An analysis was completed studying both the frequency of loss and loss experience of businesses now insured under the program and these proposed regulations will in effect raise the risk classification of twenty-four (24) businesses, lower the classification of eleven (11) and change the alarm requirement of thirteen (13) businesses. Fifty-seven (57) classes remain unchanged.

Section 82.31 *Alarm Requirements* and § 83.24 *Classification of Commercial Risk* is being revised to reflect the change in alarm system and risk classification based on the overall experience of the business. Specific changes are as follows:

Alarms

(1) Central Station (with Guard Dispatch)
- Clothing Apparel
- Clothing Manufacturers
- Drugs—Wholesale
- Gift Stores
- Hobby Shops
- Leather Products
- Savings/Loans/Bank
- Shoe Stores

(2) Central Station (without Guard Dispatch)
- Antique Stores
- Beauty & Health Supplies
- Candy/Nut Stores
- Motorbikes/Bicycles
- Pet Stores/Kennels

Classification

Amusement Enterprises
Antique Stores
Art Galleries
Art Supplies
Beach Concessions
Beauty & Health Supplies
Billiard/Pool Parlors
Candy/Nuts Stores
Clothing Apparel
Clothing Manufacturers
Clothing Men's
Clothing Women's
Clubs (Service Alcoholic Beverages)
Drugs (Wholesale)
Electrical Appliances
Food Stuffs
Gasoline Service Stations
Gift Stores
Hobby Shops
Jewelry
Leather Products
Motorbikes/Bicycles/Mopeds
Parking Lots
Pawn Brokers
Pet Stores
Precious Metals (Storage)
Precious Metals (Retail, Wholesale, Manufacturing)
Radio/T.V. (Service Only)
Radio/T.V. (Retail, Wholesale, Manufacturing)
Record Shops
Savings & Loans/Banks
Shoe Stores
Stationery/Books
Taxi/Limousines
Tobacco Dealers (Retail)
Used Clothing/Shoe Repair
Wig Shops

In order to continue coverage for those risks that have a high propensity for loss and have sustained numerous losses under the program, the Administrator is proposing to amend § 82.5(e) of the regulation and require as a condition of renewal that higher deductibles not to exceed $3,000 for

each loss occurrence be imposed. Policies with a history of loss frequency and/or severity are reviewed by the Federal Insurance Administration. The purpose of the analysis is to identify policies on which additional protective device measures should be required as a condition of renewal. Ninety (90) days prior to renewal, policies which reflect a history of frequent burglaries are reviewed based on the following criteria: Burglary losses only, same point of entry, two to one loss ratio, and two or more losses per year. Only in those instances where a policy meets the previously mentioned criteria will a higher deductible be imposed as a condition of renewal. Program experience has indicated that while an insured premises meets all of the protective devices required under the program, losses continue to occur.

Almost fifty percent (50%) of all applicants for Federal Crime Insurance elect to pay premiums of the installment plan, that is, applicants submit one half of the annual premium with the initial application or renewal bill and pay the remaining balance after receiving a six month statement. In order to offset the administrative cost of the installment billing procedure, this amendment to the regulation under § 80.4 proposes the implementation of a service fee for installment billings.

In order to permit an ordely transition of Federal Crime Insurance policyholders to the private sector when a state is no longer eligible for participation in the program, policyholders will be permitted to continue coverage until expiration and will not be terminated as currently required by § 81.1(d) upon 30 days written notice to the policyholder on the next six month anniversary date of the policy.

The definition of burglary under the residential policy form (§ 83.5) is being revised to more closely align the Federal program with the definition of burglary insurance used by the private insurance sector and to permit the program to respond to obvious losses that are denied under the current definition of burglary thus reducing need of litigation by policyholders.

These amendments are the result of the experience gained in the 16 years the Federal Crime Insurance progam has been in operation and the Federal Insurance Administration's continued desire to improve service to policyholders by making the program more closely aligned to the underwriting and rating methods used by the private insurance sector. FEMA received no written comments on the proposed revisions.

FEMA has determined that an environmental impact statement is not needed for this final rule. A copy of the finding of no significant impact and an environmental assessment is available at the above address.

FEMA has also determined that this rule will not have a significant economic impact in a substantial number of small entities, and so has not conducted a regulatory flexibility analysis.

This final rule is not a "major rule" as defined in Executive Order 12291, dated February 27, 1981, and hence no regulatory analysis has been prepared.

FEMA has determined that this final rule does not contain a collection of information requirements as described in section 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Parts 80, 81, 82, and 83

Federal Crime Insurance Program.

Accordingly, 44 CFR, Parts 80, 81, 82, and 83 are amended as follows:

PART 80—DESCRIPTION OF PROGRAM AND OFFER TO AGENTS

The authority citation for Part 80 continues to read as follows:

Authority: 12 U.S.C. 1749bb–17 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 80.4 [Amended]

(1) In § 80.4, entitled, *Offer to pay commissions to State licensed property insurance agents and brokers for submitting applications on behalf of purchasers for Federal Crime Insurance,* paragraph (f), is revised to read as follows:

* * * * *

(f) Insureds will be billed directly by the insurer for all installments (including any servicing fee) and renewal payments, and insureds should make payment by check or money order payable to the Federal Crime Insurance Program and mail such payment to the insurer and not to the agent or broker. But, nevertheless, in the event that an insured makes a timely installment payment of the current premium (after the initial payment submitted with the application) to any agent or broker, proof submitted by the insured, the agent or the broker of the timely receipt by the agent or broker may be deemed by the Administrator to be proof of timely payment to the insurer so that the insured will not be penalized because of an error or omission on the part of the agent or broker in forwarding the payment to the insurer.

* * * * *

(2) Section 80.6, entitled, *Name and address of invoicing company,* is revised to read as follows:

§ 80.6 Name and address of invoicing company.

The following company has been designated to act as servicing company for the Federal Crime Insurance Program, National Con-Serv, Inc. Written communications with the servicing company should be addressed to: Federal Crime Insurance, P.O. Box 6301, Rockville, MD 20850. The toll free telephone number for the servicing company is 800–638–8780 (policyholder service) and 800–526–2662 (claim inquiries). These numbers serve the continental United States, Puerto Rico and the Virgin Islands, except Maryland and the Washington Metropolitan Area. In the Washington Metropolitan Area call 251–1660. In Maryland, outside the Washington Metropolitan Area, call collect 301–251–1660.

PART 81—PURCHASE OF INSURANCE AND ADJUSTMENT OF CLAIMS

The authority citation for Part 81 continues to read as follows:

Authority: 12 U.S.C. 1749bbb èt seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 81.1 [Amended]

(1) In § 81.1, entitled *States eligible for the sale of crime insurance,* paragraph (d) is revised to read as follows:

* * * * *

(d) Notwithstanding the provisions of § 81.7, Federal Crime Insurance policies in-force at the time a State is determined to be no longer eligible for further participation in the program shall thereupon be terminated upon 30 days written notice to the policyholders effective on the expiration date of the policy and no further coverage for such policyholders with respect to premises located in such State shall thereafter be written unless the State again becomes eligible under the program.

§ 81.7 Cancellations in order to renew.

(2) Section 81.7a entitled *Cancellations in order to renew* is revised to read as follows:

Notwithstanding the provisions of § 81.7(c), an insured shall not be permitted after the effective date of any applicable rate reduction to cancel and rewrite an existing crime insurance policy and receive a pro rata refund of unearned premium. Further, cancellation and rewrite of coverage to avoid an impending rate increase shall not be permitted, unless such cancellation was made to accomplish an increase in the amount of insurance coverage or as a

result of the removal of insured to another premises.

PART 82—PROTECTIVE DEVICE REQUIREMENTS

The authority citation for Part 82 continues to read as follows:

Authority: 12 U.S.C. 1749bbb et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

Subpart A—General

(1) In § 82.5 entitled *Inspection of commercial premises*, paragraph (e), is revised to read as follows:

§ 82.5 Inspection of commercial premises.

* * * * *

(e) The Administrator may in his discretion waive one or more protective device requirements with respect to any policy where he determines that compliance would be impractical and would impose a cost not reasonably commensurate with the protection derived. However, in the event of any loss contributed to in whole or in part by any such waiver, the Administrator may withdraw such waiver upon mailing to the insured thirty days written notices of withdrawal. Any loss occurring after thirty days from the day of the mailing of said notice shall not be paid unless the insured's premises shall be in compliance with the previously waived protective device requirement at the time of such loss. The Administrator may also in his or her discretion determine that the frequency and/or severity of occurrences of loss experienced under any policy issued under the provision of paragraphs (b) and (c) of this section, requires that as a condition of continuation of coverage on renewal such policy the premises insured thereunder be protected by one or more of the protective devices described in paragraphs (a), (b), (c), (d), (e), (f)(1), (2), (3), and (4) of this section for applicable points of entry for incurred losses and also may require as a condition of renewal, higher deductibles not to exceed $3,000 for each loss occurrence.

* * * * *

Subpart C—Nonresidential Properties

1. In § 82.31, paragraph (f)(1) is revised to read as follows:

§ 82.31 Minimum standards for industrial and commercial properties.

* * * * *

(f) The following types of establishments whose inventories pose a particularly serious risk shall, as a minimum, in addition to the requirements of paragraphs (a), (b), and (d) of this section be protected by the type of alarm system indicated. If the system specified in paragraphs (f)(1) and (f)(2) of this section is not available in the community in which the premises are located, the type of system specified in paragraph (f)(3) of this section shall be permitted. In addition to, but not in place of, any central station supervised alarm system or silent alarm system required under paragraphs (f)(1), (2), and (3) of this section, an insured may also utilize a local alarm system.

(1) Central Station (with Guard dispatch) supervised service alarm system shall be required for the following businesses:

(i) Beer/Wine—Wholesale
(ii) Boutiques
(iii) Cameras/Photo Supplies/Film Processing—Wholesale/Retail/Mfg.
(iv) Clothing Apparel/Children's (12 and under)—Wholesale/Retail
(v) Clothing Manufacturers/Tailoring
(vi) Clothing/Mens' (age 12 and over)—Wholesale/Retail
(vii) Clothing/Womens' (age 12 and over)—Wholesale/Retail
(viii) Drug Stores and Druggist Sundries
(ix) Drugs—Wholesale
(x) Electrical Appliance/Apparatus/Parts—Wholesale/Retail/Mfg.
(xi) Food Stuffs—Wholesale
(xii) Gasoline Service Station/Fuel Dealers
(xiii) Gift Stores (Costume Jewelry $25.00—Wholesale limit)—Retail/Wholesale/Mfg.
(xiv) Hobby Shops/Toys/Novelty
(xv) Jewelry—Retail/Wholesale/Mfg./Storage
(xvi) Leather Products—Wholesale/Retail/Mfg.
(xvii) Liquor Sales—Retail
(xviii) Pawnbrokers
(xix) Precious Metals/Electroplating—Mfg./Wholesale/Retail
(xx) Radio/TV/Stereo/Electronic Equipment/Computer—Wholesale
(xxi) Record Shops/Video Stores
(xxii) Savings/Loans/Banks and other Financial Institutions (excluding Check Cashing)
(xxiii) Shoe Stores—Wholesale/Retail/Mfg.
(xxiv) Tobacco—Wholesale
(xxv) Used Clothing/Shoe Repair/Thrift Shops
(xxvi) Variety Stores/Department Stores

(2) Central Station (without Guard dispatch) supervised service alarm system shall be required for the following businesses:

(i) Antique Store
(ii) Art Supplies—Retail/Wholesale/Mfg.
(iii) Auto Parts (No Service)—Wholesale/Retail/Mfg.
(iv) Beauty & Health Supplies/Cosmetics—Wholesale/Retail/Mfg.
(v) Candy/Nut Stores—Retail/Wholesale
(vi) Dry Goods/Textiles/Serving Material—Wholesale/Retail/Mfg.
(vii) Furniture/Home Furnishing/Floor Covering/Upholstery—Wholesale/Retail/Mfg.
(viii) Furriers—Wholesale/Retail/Mfg./Storage
(ix) Grocery Stores/Delicatessen/Health Food Stores
(x) Guns/Ammunition—Wholesale/Retail/Mfg.
(xi) Hardware/Houseware—Wholesale/Retail/Mfg.
(xii) Liquor—Wholesale
(xiii) Meat/Poultry/Fish Dealers
(xiv) Music Stores/Instruments/Supplies—Wholesale/Retail/Mfg.
(xv) Motorbikes/Bicycles/Moped
(xvi) Pet Stores/Kennels—Supplies
(xvii) Precious Metals/Electroplating—Wholesale/Retail/Mfg.
(xviii) Sport Goods (General)—Wholesale/Retail/Mfg.
(xix) Tobacco Dealers—Retail
(xx) Wig Shops

(3) Silent alarm system shall be required for the following businesses:

(i) All Risks Not Otherwise Classified
(ii) Amusement Enterprises
(iii) Art Gallery
(iv) Beach Concession Stands/Supplies
(v) Billiard/Pool Parlors
(vi) Building Contractors—Material—Retail/Wholesale
(vii) Coin/Stamp Shop
(viii) Distributors—Variety/Non-Alcoholic Beverages
(ix) Dry Cleaners
(x) Fine Arts (Porcelain, Ivory, Oriental Rugs, Paintings, etc.)
(xi) Florist—Wholesale/Retail
(xii) Garages/Auto Repair/Body Shops
(xiii) Hotel/Motel/Rooming House/Apartments
(xiv) Industrial Material/Iron & Metal Work—Wholesale/Retail/Mfg.
(xv) Laundries
(xvi) Marine/Aircraft Materials—Sales/Service—Retail/Wholesale/Mfg.
(xvii) Medical (Doctors/Dentist, etc.) Supplies—Retail/Wholesale/Mfg.
(xviii) Office Supplies/Business Machines/Equipment—Retail/Wholesale/Mfg.
(xix) Restaurants
(xx) Schools (Profit) Day Care Centers/Studios
(xxi) Specialized Clothing (Sportwear/Lingerie/Accessories/etc.)—Wholesale/Retail/Mfg.
(xxii) Stationery/Books/Printing/Engraving/Paper/Plastic Products—Wholesale/Retail/Mfg.

(xxiii) Tavern/Bar/Lounge

(4) Local alarm system shall be required for the following businesses:

(i) Auto Parts (Sales/Service)—Wholesale/Retail/Mfg.
(ii) Beauty/Barber Shops
(iii) Check Cashing Agency/Money Exchange—Collectors
(iv) Disco/Dance Halls/Pavilions
(v) Donut/Pastry/Coffee/Ice Cream (Seated Service)
(vi) Fast Food/Bakery/Ice Cream (Carry Out)
(vii) Flea Markets/Auction Houses
(viii) Fruit/Vegetable/Newspaper Stands
(ix) Funeral Homes
(x) Golf and Other Sports Professionals
(xi) Health Clubs/Spas/Massage Parlors
(xii) Nursing Homes/Convalescent
(xiii) Parking Lots/Rental Cars/Carwash/Taxi Office
(xiv) Photographers Studio
(xv) Professional/Specialized Service (Lawyers/Accountants/Couriers/Housekeeping, etc.)
(xvi) Radio/TV/Stereo/Electronic Equipment/Computers (Service Only)
(xvii) Realty/Insurance/Travel/Employment (Agencies)
(xviii) Security/Locksmiths/Alarms—Retail/Wholesale/Mfg.
(xix) Vending Machines (Sales)—Retail/Wholesale/Mfg.

* * * * *

PART 83—COVERAGES RATES AND PRESCRIBED POLICY FORMS

The authority citation for Part 83 continues to read as follows:

Authority: 12 U.S.C. 1749bbb et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

Subpart A—Residential Crime Insurance Coverage

1. Section 83.4, *Residential crime insurance rates*, is revised to read as follows.

§ 83.4 Residential crime insurance rates.

The specific limits of coverage and applicable annual premiums for residential crime insurance coverage are revised to read as follows:

Policy limits	Annual premium	Policy limits	Annual premium
$1,000	$30.00	$6,000	$80.00
2,000	40.00	7,000	90.00
3,000	50.00	8,000	100.00
4,000	60.00	9,000	110.00
5,000	70.00	10,000	120.00

NOTE.—If the premises are protected by an acceptable residential burglary alarm system multiply the above applicable premiums by .95. Minimum premiums credit $2.00.

§ 83.5 [Amended]

2. Section 83.5 entitled *Required residential policy form*, is amended in the following respects.

a. Under the heading of "Conditions" of the Residential Crime Insurance Policy, section 1, described as "Definitions", the paragraph entitled (c) Burglary, "Burglary" or "Burglary and larceny incident thereto" is redefined to read as follows:

(c) *Burglary*. "Burglary" or "burglary and larceny incident thereto" mean the felonious abstraction of insured property from within the premises by a person making felonious entry.

Subpart B—Commercial Crime Insurance Coverage

§ 83.21 [Amended]

In § 83.21 entitled *Description of commercial coverage*, paragraphs (a) and (b) are revised to read as follows:

(a) The purpose of this § 83.21 is descriptive only, and it shall be subject to the express terms and conditions of the policy form prescribed in 83.26.

(b) The initial policy issued by the insurer for commercial properties shall be known as the Commerical Crime Insurance Policy. Subject to its terms, the policy reimburses an insured for loss from robbery inside the premises, robbery outside the premises (up to a limit of $5,000 unless an armed guard accompanies the insured's messenger), the wrongful taking of insured property by compelling an insured to admit a person into the premises, safe burglary and larceny incident thereto (up to a limit of $5,000 unless the insured property is in a Class E safe anchored to the floor), theft observed by the insured, burglary and larceny incident thereto, robbery of a watchman (not to exceed $50 for any one article of jewelry), and damage to the premises (of which the insured is owner or for which the insured is liable) as a result of any of the foregoing. The policy is subject to the exclusions set forth therein.

* * * * *

§ 83.24 [Amended]

In § 83.24 entitled *Classification of commercial risks*, paragraph (d) is revised to read as follows:

* * * * *

(d) The following business classifications shall be applicable to the Commercial Crime Insurance Policy:

CLASSIFICATION/ALARM LISTING

Premium Code	Premium Class	Description	Alarm type
A1	3	All risks not otherwise classified.	3
02	2	Amusement enterprise	3
B1	3	Antique store	2
C1	3	Art gallery	3
33	4	Art supplies (retail, wholesale, mfg.).	2
D1	2	Auto parts—No service (retail, wholesale, mfg.).	2
03	2	Auto parts—sales/Service (retail, wholesale, mfg.).	4
47	3	Beach concession stands/supplies.	3
32	2	Beauty/barber shops	4
41	3	Beauty & health supplies/cosmetic (retail, wholesale, mfg.).	2
C6	4	Beer/wine food (retail)	2
F1	6	Beer/wine (wholesale)	1
04	3	Billiard/pool parlors	3
70	6	Boutiques	1
05	2	Bowling lanes or centers/skating rinks.	0
34	2	Building contractors/materials (retail, wholesale, mfg.).	3
06	4	Cameras/photo supplies/film processing (retail, wholesale, mfg.).	1
43	3	Candy/nuts stores (retail, wholesale).	2
G1	4	Check cashing agency/money exchange/collectors.	4
01	1	Churches/charities/nonprofit org/public properties.	0
36	5	Clothing apparel/children 12 & under (retail, wholesale).	1
I1	6	Clothing manufacturer/tailoring	1
22	6	Clothing/men's (age 12 & over) (retail, wholesale).	1
30	6	Clothing/women's (age 12 & over) (retail, wholesale).	1
07	3	Clubs (serving alcoholic beverages).	3
K1	3	Coin/stamp shop	3
08	2	Discos/dance halls/pavilions	4
50	2	Distributors—variety/non-alocholic beverages.	3
C5	3	Donut/pastry/coffee/ice cream shop (seated service).	4
09	4	Drug stores/druggist's sundries	1
L1	4	Drugs (wholesale)	1
10	4	Dry cleaners	3
38	3	Dry goods—textile/sewing material (retail, wholesale, mfg.).	2
11	4	Electrical appliances/apparatus/parts (retail, wholesale, mfg.).	1
E1	2	Fast food/bakery/donut/ice cream (carryout only).	4
39	2	Fine arts—procelain/ivory/oriental rugs/paintings/etc.	3
78	2	Flea markets/auction houses	4
40	2	Florist (retail/wholesale)	3
M1	3	Food stuffs (wholesale)	1
N1	2	Fruit/vegetable/newspaper stands.	4
45	2	Funeral homes	4
42	2	Furniture/home furnishings/floor coverings/upholstery new or used (retail, wholesale, mfg.).	2
12	4	Furriers (retail, wholesale, mfg. storage).	2
13	3	Garages/auto repair/body shops.	3
14	4	Gasoline service station/fuel dealers.	1
44	3	Gift store/costume jewelry $25.00 wholesale limit (retail, wholesale, mfg.).	1
15	2	Golf & other professional sports shops.	4
16	4	Grocery stores/delicatessens/health food stores.	2
17	6	Guns/ammunition (retail, wholesale, mfg.).	2
46	3	Hardward/housewares (retail, wholesale, mfg.).	2
C2	2	Health clubs/spas/massage parlors.	4

CLASSIFICATION/ALARM LISTING—Continued

Premium		Description	Alarm type
Code	Class		
80	3	Hobby shops/toys/novelty (retail, wholesale, mfg.).	1
48	2	Hotel/motel/rooming house/ apartments.	3
01	2	Industrial materials/iron & metal work (retail, wholesale, mfg.).	3
18	6	Jewelry (retail, wholesale, mfg. Storage).	1
19	2	Laundries	3
52	3	Leather products (retail, wholesale, mfg.).	1
20	5	Liquor sales (retail)	1
P1	5	Liquor (wholesale)	2
37	3	Marine/aircraft materials—sales/service (retail, wholesale, mfg.).	3
21	2	Meat/poultry/fish dealers	2
54	2	Medical supplies (doctors, dentists, etc.) (retail, wholesale, mfg.).	3
Q1	3	Motorbikes/bicycles/mopeds	2
56	3	Music stores/instruments/supplies (retail, wholesale, mfg.).	2
35	2	Nursing/convalescent homes	4
C3	2	Office supplies/business machines/equipment (retail, wholesale, mfg.).	3
58	2	Parking lots/rental cars/carwash/taxi offices.	4
23	5	Pawn brokers	1
76	3	Pet stores/kennels/supplies	2
R1	2	Photographers studios	4
S1	6	Precious metals/electroplating (storage).	2
C8	5	Precious metals/electroplating (retail, wholesale, mfg.).	1
74	2	Professional/specialized services (lawyers, accountants, couriers, housekeeping, etc.).	4
24	6	Radio/TV/stereo/electronic equipment/computers (retail, wholesale, mfg.).	1
C4	2	Radio/TV/stereo/electronic equipment/computers (service only).	4
62	2	Realty/insurance/travel/ employment agencies.	4
T1	4	Record shop/video stores	1
25	3	Restaurant/caterer	3
26	5	Savings & loans/banks & other financial institutions (excluding check cashing).	1
66	2	Schools (profit)/day care centers/studios.	3
64	2	Security/locksmiths/alarms (retail, wholesale, mfg.).	4
68	6	Shoe stores (retail, wholesale, mfg.).	1
H1	5	Specialized clothing—sportswear/lingerie/accessories/ etc. (retail, wholesale, mfg.).	3
U1	5	Sport good/general (retail, wholesale, mfg.).	2
60	3	Stationery/books/printing/ engraving/paper or plastic products (retail, wholesale, mfg.).	3
27	4	Tavern/bar/lounge	3
V1	2	Taxi/limousines (robbery only)	0
28	2	Theatres	0
29	4	Tobacco Dealers (retail)	2
C9	3	Tobacco dealers (wholesale)	1
72	4	Used clothing/shoe repair/thrift shops.	1
W1	6	Variety stores/department stores.	1
X1	2	Vending mechines (sales/rentals/mfg.).	4
Y1	5	Wig shops	2

§ 83.26 Required commercial policy form

Section 83.26, paragraph (b) entitled *Commercial Crime Insurance Policy form*, is amended in the following respects:

Insuring Agreements

1. In Option 2 (Robbery Only), Insuring Agreement VI the first paragraph is revised.

VI. Robbery, Including Observed Theft, Outside of the Premises

To pay for loss by robbery or observed theft of money, securities and merchandise, including the wallet or bag containing such property while such property is in conveyance by the insured or his messenger outside the named premises, but no payment shall be made for any loss in excess of $5,000 except when the insured or his messenger is accompanied by a guard armed with a firearm. The person carrying the insured property and the armed guard cannot be the same person.

* * * * *

2. In Option 3 (*Robbery and Burglary in Uniform and Varying Amounts*) Insurance Agreement II the first paragraph is revised.

II. Robbery Including Observed Theft Outside of the Premises

To pay for loss by robbery or observed theft of money, securities and merchandise, including the wallet or bag containing such property while such property is in conveyance by the insured or his messenger outside the named premises, but no payment shall be made for any loss in excess of $5,000 except when the insured or his messenger is accompanied by a guard armed with a firearm. The person carrying the insured property and the armed guard cannot be the same person.

* * * * *

Exclusions

3. The paragraph entitled exclusions is amended by adding paragraph (1) to read as follows:

* * * * *

(1) To loss from a night depository.

Conditions

Under the section entitled "Conditions", paragraph (6) entitled "Insured's duties when loss occurs" is revised as follows:

* * * * *

(6) Upon knowledge of loss or of an occurrence which may give rise to a claim for loss, the insured shall (a) give notice thereof as soon as practicable to law enforcement authorities and to the Insurer through its authorized agent and (b) file detailed proof of loss duly sworn to, with the insurer through its authorized agent within sixty (60) days after the discovery of loss unless such time is extended by the Federal Insurance Administrator in writing. The Administrator may, in his or her discretion, waive the requirement that the proof of loss be sworn to. Upon the insurer's request, the insured and every claimant hereunder shall submit to examination by the insurer, subscribe the same under penalty of 18 U.S.C. 1001 pertaining to fraud and false representation, and produce all pertinent records, all at such reasonable times and places as shall be designated, and shall cooperate with the insurer in all matters pertaining to loss or claims with respect thereto. The insured shall as a condition of continued coverage take reasonable action immediately following the discovery of a loss to protect the premises from further loss."

* * * * *

These amendments issued under 12 U.S.C. 1749bbb-17.

Harold T. Duryee,

Federal Insurance Administrator, Federal Insurance Administration.

[FR Doc. 87-18547 Filed 8-14-87; 8:45 am]

BILLING CODE 6718-01-M

DEPARTMENT OF DEFENSE

48 CFR Part 215

Department of Defense Federal Acquisition Regulation Supplement; DoD Profit Policy

AGENCY: Department of Defense (DoD)

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule issuing changes to the DoD Federal Acquisition Regulation Supplement with respect to DoD Profit Policy, published in the **Federal Register** on August 3, 1987 (52 FR 28705). This action is necessary to add coverage which was omitted.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Richard J. Wall, USAF, (202) 695-9764.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Accordingly, the Department of Defense is correcting 48 CFR Part 215 as follows:

PART 215—CONTRACTING BY NEGOTIATION

Section 215.970-1 is corrected to add, on page 28711, in paragraph (b)(2), immediately preceding paragraph (b)(3), paragraph (v), to read as follows:

215.970-1 Procedures for establishing a profit objective.

* * * * *

(b) * * *

(2) * * *

(v) In determining contract type risk, it is appropriate to consider additional risks associated with contracts for foreign military sales (FMS) which are not funded by United States appropriations. For example, a contract containing an offset arrangement with the foreign country may expose the contractor to additional risk. The contracting officer may recognize additional risk if the contractor can demonstrate that there are substantial risks above those normally present in DoD contracts for similar items. If an additional risk factor is recognized, the total profit factor for cost risk shall not exceed the designated range limits established for each contract type. The additional assigned value for contract type shall not apply to FMS sales made by United States Government inventories or stocks nor to acquisitions made under DoD cooperative logistics support arrangements.

* * * * *

[FR Doc. 87-18725 Filed 8-14-87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1: Amdt 1-219]

Organization and Delegation of Powers and Duties; University Transportation Centers Grant Program

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Final rule.

SUMMARY: In section 314 of Pub. L. 100-17, Surface Transportation and Uniform Relocation Assistance Act of 1987, signed into law on April 2, 1987, the Congress has directed the Secretary of Transportation to make grants to one or more nonprofit institutions of higher learning to establish and operate one regional transportation center in each of the ten Federal regions which constitute the Standard Federal Regional Boundary System. This document delegates to the Assistant Secretary for Policy and International Affairs with concurrence of the Deputy Secretary the authority vested in the Secretary of Transportation to administer the program, select recipients of the grants, and carry out the provisions of section 314. $10,000,000 has been authorized for each of fiscal years 1988 through 1991 in order to carry out the program.

EFFECTIVE DATE: July 6, 1987.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the General Counsel, C-50, (202) 366-9306, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: 49 U.S.C. 1607c (Section 314 of Pub. L. 100-17, April 2, 1987) provides that the Secretary of Transportation shall make grants to one or more nonprofit institutions of higher learning to establish and operate one regional transportation center in each of the ten Federal regions which constitute the Standard Federal Regional Boundary System.

The Secretary of Transportation has determined that the authority vested in her by section 314 of Pub. L. 100-17 to administer the University Transportation Centers Grant Program should be delegated to the Assistant Secretary for Policy and International Affairs with concurrence of the Deputy Secretary. This authority was delegated effective July 6, 1987.

Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the **Federal Register.**

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part I of Title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

2. Section 1.56 is amended by adding a new paragraph (k) to read as follows:

§ 1.56 Delegations to Assistant Secretary for Policy and International Affairs.

* * * * *

(k) Carry out the functions vested in the Secretary of Transportation by 49 U.S.C. 1607c (Section 314 of the "Surface Transportation and Uniform Relocation Assistance Act of 1987," Pub. L. 100-17, April 2, 1987), relating to the University Transportation Centers Grant Program, with concurrence of the Deputy Secretary.

Issued on: August 7, 1987.

Elizabeth Dole,

Secretary of Transportation.

[FR Doc. 87-18706 Filed 8-14-87; 8:45 am]

BILLING CODE 4910-62-M

Proposed Rules

Federal Register
Vol. 52, No. 158
Monday, August 17, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed

AGENCY: Commodity Credit Corporation USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations at 7 CFR 1421.5551 *et seq.* relating to the Commodity Credit Corporation (CCC) Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed. The proposed rule would change provisions relating to when the President or Executive Vice President, CCC, may temporarily waive one or more of the standards of the subpart.

DATES: Comments must be received on or before September 16, 1987, in order to be assured of consideration.

ADDRESS: Interested persons are invited to send written comments to Paul W. King, Director, Warehouse Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Steven Closson, Chief, Storage Contract Branch, Warehouse Division, USDA, Room 5962-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5647.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in conformity with Executive Order 12291 and Department Regulation 1512–1 and has been classified as "not major" since implementation of the provisions of this proposed rule will not result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, State, or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 28115 (June 24, 1983).

It has been determined that this proposed rule will not increase the federal paperwork burden for individuals, small business, and other persons. CCC is also not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule. Therefore, the Regulations Flexibility Act is not applicable to this proposed rule and a Regulatory Flexibility Analysis was not prepared.

It has been determined by an environmental evaluation that this action will have no significant adverse impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The CCC Charter Act (15 U.S.C. 714 *et seq.*) authorizes CCC to conduct various activities to stabilize, support, and protect farm income and prices. CCC is authorized to carry out such activities as making price support available with respect to various agricultural commodities, removing and disposing of surplus agricultural commodities, exporting or aiding in the exportation of agricultural commodities, and procuring agricultural commodities for sale both in the domestic market and abroad.

Section 4(h) of the CCC Charter Act provides that CCC shall not acquire real property in order to provide storage facilities for agricultural commodities, unless CCC determines that private facilities for the storage of such commodities are inadequate. Further, section 5 of the CCC Charter Act provides that, in carrying out the Corporation's purchasing and selling operations, and in the warehousing, transporting, processing, or handling of agricultural commodities, CCC is directed to use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangements of trade and commerce.

Accordingly, CCC has published Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed which must be met by warehousemen before CCC will enter into storage agreements with such warehousemen for the storage of grain and other commodities which are owned by CCC or which are serving as collateral for CCC price support loans.

Presently, program requirements permit producers to obtain price support loan on their grain only when it is stored in approved space on the farm or in commercial warehouses. In a small number of specific instances, some producers as well as commercial warehousemen may not have sufficient storage space available to meet their needs. Some producers may be required to haul their grain a considerable distance to a CCC approved warehouse with space available in order to obtain a price support loan even though a commercial warehouse may be available within the community that is not CCC approved because it cannot meet all of these standards. The regulations at 7 CFR 1421.5557 now permit the CCC, to exempt, in writing, applicants in such area from one or more of the standards of this subpart and may establish such other standards as are considered necessary to safeguard the interests of CCC.

However, warehousemen who are currently under contract with CCC are required to meet all of the terms and conditions of the regulations. The status of the warehouseman, particularly his ability to meet financial requirements of the standards, may have changed. This places the President or Executive Vice President, CCC, in the position of being unable to waive one or more of the standards even if the warehouse space is needed by CCC. To correct this situation, it is proposed that the regulations at 7 CFR 1421.5557 be amended to permit the President or the Executive Vice President, CCC, to temporarily waive one or more of the standards for warehousemen who are currently under contract with CCC when it is determined that the warehouse services are needed in a local area.

List of Subjects in 7 CFR Part 1421

Grain, Loan programs, Agriculture, Oilseeds, Peanuts, Price support

programs, Soybeans, Surety bonds, Tobacco, Warehouses.

Proposed Rule

Accordingly, it is proposed that 7 CFR Part 1421 be amended as follows:

PART 1421—[AMENDED]

1. The authority citation for 7 CFR Part 1421 continues to read as follows:

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); secs. 101, 201, 301, 401, 403, and 405 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 1052, as amended, 1053, as amended 1054, as amended (7 U.S.C. 1441, 1446, 1447, 1421, 1423, and 1425); secs. 101A, 105C, and 107D of Pub. L. 99-198, unless otherwise noted.

2. Section 1421.5557 is revised to read as follows:

§ 1421.5557 Exemption from requirements.

If warehousing services in any area cannot be secured under the provisions of the subpart and no reasonable and economic alternative is available for securing such services for commodities under CCC programs, the President or Executive Vice President, CCC, may temporarily exempt, in writing, applicants for storage agreements and warehousemen who are currently under contract with CCC in such area from one or more of the standards of this subpart and may establish such other standards as are considered necessary to satisfactorily safeguard the interests of CCC.

Signed at Washington, DC, on August 11, 1987.

Vern Neppl,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87-18766 Filed 8-14-87; 8:45 am]

BILLING CODE 3410-05-M

FEDERAL RESERVE SYSTEM

12 CFR Part 206

[Regulation F, Docket No. R-0609]

Securities of State Member Banks; Regulation F

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board proposes to amend its Regulation F (12 CFR Part 206), pursuant to the Board's responsibility under section 12(i) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78(i)) ("Act"). The proposed amendment rescinds the various forms included in 12 CFR 206.41 through 206.82 and replaces those forms with a requirement that state member banks filing with the Board pursuant to section 12(i) of the 1934 Act, file information with the Board on the forms required by the Securities and Exchange Commission (the "SEC") of entities, such as bank holding companies, which are subject to its regulation. The proposal would also permit a bank with no foreign offices and total assets of less than $100 million to substitute the quarterly financial statements filed on Federal Financial Institutions Examination Council ("FFIEC") Form 034 for the financial statements normally required on SEC Form 10-Q.

DATES: Comments on this proposal must be submitted by September 16, 1987.

ADDRESSES: Comments, which should refer to Docket No. R-0609, should be sent to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments may also be sent to Mr. Robert Fishman, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Walter R. McEwen, Attorney, Legal Division (202/452-3321), Kenneth M. Kinoshita, Attorney, Legal Division (202/452-3721), or Stanley C. Weidman, Senior Accountant/Analyst, Division of Banking Supervision and Regulation (202/452-3502); and for the hearing impaired *only:* Telecommunication Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551. Federal Reserve Paperwork Clearance Officer: Nancy Steele, Division of Research and Statistics (202/452-3822). Interested parties may also contact the OMB Desk Officer, Robert Fishman (202/395-6880).

SUPPLEMENTARY INFORMATION: State member banks issuing securities that are registered under sections 12(b) or 12(g) of the Act, 15 U.S.C. 78(b), (g), and certain of their principal shareholders, are required to file certain reports with the Board under the Board's Regulation F, 12 CFR Part 206. The purpose of these reports is to provide investors in state member bank securities with information on these banks. Pursuant to its authority under section 12(i) of the Act, 15 U.S.C. 78(i), the Board proposes to amend its Regulation F (12 CFR Part 206) in order to ensure that the disclosure required by Board's securities regulation pursuant to section 12(i) of the Act, remains substantially similar to that required by the Securities and Exchange Commission.

The Board proposes the adoption of a requirement that banks subject to Regulation F file with the Board those forms and reports which would be required of an entity regulated by the SEC. This proposal requires state member banks subject to Regulation F to file that information which the SEC has determined to be warranted.

Proposed 12 CFR 206.2—Disclosure Requirements—provides that the rules, regulations and forms prescribed by the SEC pursuant to sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the Act be followed by state member banks. Accordingly, The Board would rescind 12 CFR 206.41-206.82, the sections of Regulation F setting forth various forms. Adoption of this proposal would render several other sections of Regulation F superfluous. Accordingly, the Board also proposes to rescind 12 CFR 206.2, 206.3(d), 206.4, 206.5, 206.6, 206.7 and 206.8.

The Board recognizes that this proposal would require state member banks subject to Regulation F to submit audited annual financial statements as required by the SEC's Regulation S-X. The Board notes, however, that 33 of the 36 banks presently subject to Regulation F already submit audited annual financial statements and concludes that the value of the independent audit outweighs the burden imposed on those banks which presently do not furnish audited annual financial statements.

The proposal also includes an amendment to Regulation F to permit state member banks which have no foreign offices and total assets of less than $100 million to elect to file quarterly financial statements on FFIEC Form 034, thus reducing the burden of compliance on those banks without adverse impact on the information gathering responsibilities of the Board. The proposal would permit such banks to elect to file either the balance sheet and income statement required by SEC Form 10-Q or the balance sheet and income statement required by FFIEC Form 034. FFIEC Form 034 is the least burdensome FFIEC call report form; it was designed for small commercial banks with no foreign offices. The basic information disclosed in FFIEC Form 034 is substantially similar to that required by SEC Form 10-Q, although the format of the two forms differs. Therefore, the Board concludes that no substantive purpose would be served by requiring a small state member bank to file two forms detailing similar information in different formats.

The Board proposes to permit Regulation F banks to make this election only if the net income, total assets and total equity capital in financial statements filed on FFIEC Form 034 would not differ materially from corresponding amounts in financial statements required by Form 10–Q. FFIEC Form 034 is subject to certain regulatory reporting standards while Form 10–Q must be prepared in accordance with generally accepted accounting principles ("GAAP"). The Board concludes, however, that material regulatory reporting standards/GAAP differences are unlikely to occur in banks with less than $100 million in assets. The Board expects that the 36 state member banks that are subject to the reporting requirements (and certain of their shareholders) will together take 5,713 hours to complete the forms. Assuming an estimated cost of $20 per hour, the Board estimates the total reporting burden on the public to be approximately $114,000 per annum.

List of Subjects in 12 CFR Part 206

Accounting, Confidential business information, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

For the reasons set out in this notice, and pursuant to the Board's authority under section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78), the Board proposes to amend 12 CFR Part 206 as follows:

PART 206—SECURITIES OF STATE MEMBER BANKS

1. The authority citation for Part 206 is revised to read as follows:

Authority: Sec. 12(i) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78l(i)).

2. The Board proposes to revise § 206.1 to read as follows:

§ 206.1 Authority, scope and purpose.

This part is issued by the Board of Governors of the Federal Reserve System (the "Board") pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78) (the "Act") and applies to all securities subject to registration pursuant to section 12(b) or section 12(g) of the Act by a bank that is organized under State law and is a member of the Federal Reserve System ("bank"). This part vests in the Board, the powers, functions and duties vested in the Securities and Exchange Commission to administer and enforce sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the Act with respect to State member banks.

3. The Board proposes to revise § 206.2 to read as follows:

§ 206.2 Disclosure requirements.

(a) With respect to any securities issued by a State member bank, the rules, regulations and forms adopted or amended by the Securities and Exchange Commission pursuant to sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the Securities Exchange Act of 1934, shall apply to the securities issued by State member banks, except as otherwise provided in this part. The term "Commission" as used in those rules and regulations shall with respect to securities issued by State member banks be deemed to refer to the Board unless the context otherwise requires.

(b)(1) Notwithstanding any definition in the rules and regulations promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, 15 U.S.C. 78(a) *et seq.*, any State member bank which has no foreign offices and has total assets of less than $100 million as of the end of its most recent fiscal year may elect to include in the Form 10–Q the financial statements required in quarterly reports on either:

(i) The SEC's Form 10–Q; or

(ii)The balance sheet and income statement from the Federal Financial Institutions Examination Council ("FFIEC") Form 034

(2) Such a State member bank may not elect to file quarterly financial statements on FFIEC Form 034 if the information provided on FFIEC Form 034 reflects certain regulatory reporting standards and the reported amounts of net income, total assets or total equity capital would differ materially from financial statements prepared in accordance with generally accepted accounting principles ("GAAP").

(3) A State member bank qualifying for and electing to use FFIEC Form 034 financial statements in Form 10–0 Quarterly Reports shall include earnings per share or net loss per share data required by GAAP and disclosure of material contingencies, in the Management's Discussion and Analysis of Financial Condition and Results of Operations.

4. The Board proposes to amend § 206.3 by revising the section heading and paragraphs (a) and (b) and removing paragraph (d) to read as follows:

§ 206.3 Filing; inspection, confidential information.

(a)(1) All papers required to be filed with the Board pursuant to the Act or regulations thereunder shall be filed with the Board by submitting such filings to the Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Material may be filed by delivery to the Board, through the mails, or otherwise. The date on which papers are actually received by the Board shall be the date of filing thereof if all of the requirements with respect to the filing have been complied with.

(2) No filing fees specified by the Commission's rules shall be paid to the Board.

(b) Copies of the registration statement, definitive proxy solicitation materials, reports and annual reports to shareholders required by § 206.2 (exclusive of exhibits) will be available for inspection at the Board's office in Washington, DC, as well as at the New York, Chicago, and San Francisco Federal Reserve Banks and at the Reserve Bank in the district in which the reporting bank is located.

* * * * *

§§ 206.4 through 206.8 [Removed]

5. Sections 206.4 through 206.8 are removed.

§§ 206.41 through 206.82 [Removed]

6. Sections 206.41 through 206.82 are removed.

Board of Governors of the Federal Reserve System, August 7, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–18445 Filed 8–14–87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Supervision of Parolees Testing Positive for Acquired Immune Deficiency Syndrome

AGENCY: Parole Commission, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Parole Commission proposes to adopt policies at its October, 1987, quarterly meeting concerning the supervision of federal parolees who have tested positive for Acquired Immune Deficiency Syndrome (AIDS) and seeks public comment to assist in the development of such policies.

DATE: Public comment must be received by October 1, 1987.

ADDRESS: Comments should be addressed to: Sharon Gervasoni, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-5959.

FOR FURTHER INFORMATION CONTACT: Sharon Gervasoni, Telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: The U.S. Parole Commission is considering the adoption of policies concerning the supervision of federal parolees who have been tested as positive for exposure to the Acquired Immune Deficiency Syndrome (AIDS) virus. On June 8, 1987 the Attorney General announced that federal prisoners would be tested for AIDS before their release from custody and that positive test results would be communicated to the United States Probation Offices which will supervise their periods of supervision under the jurisdiction of the Commission

The Commission specifically invites public comment on the following issues:

(1) Should the Commission impose a condition of parole prohibiting the transmission of bodily fluids (through unprotected sex, donation of blood, etc.) by a parolee who has had a positive test for AIDS infection?

(2) Should the Commission impose parole conditions requiring infected parolees to disclose their status to prospective sex partners or other persons in danger of being infected by such parolees?

(3) Should U.S. Probation Officers disclose AIDS test results to spouses or fiances of parolees or to other classes of persons who are in danger of being infected by such parolees?

(4) Should U. S. Probation Officers disclose to public health agencies the identities of parolees who have been tested positive for exposure to the AIDS virus?

(5) Should the Commission require parolees who are infected to participate in AIDS counseling programs?

(6) Do any or all of the above proposals inappropriately extend the role of the Commission from the prevention of crime to the prevention of disease?

The Commission also invites public comment on any other concerns which might be related to the supervision of AIDS infected parolees.

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

Date: July 24, 1987.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 87-18718 Filed 8-14-87; 8:45 am]

BILLING CODE 4410-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-301, RM-5821]

Radio Broadcasting Services; Dunnellon, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Asterisk Communications, Inc., licensee of Station WTRS-FM, Dunnellon, Florida, proposing to substitute Channel 272C2 for Channel 272A and to modify its Class A license to specify the new channel.

DATES: Comments must be filed on or before October 5, 1987, and reply comments on or before October 20, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dennis F. Begley, Reddy, Begley and Martin, 2033 M Street NW., Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This s a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-301, adopted July 24, 1987, and released August 10, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not appy to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-18686 Filed 8-14-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 87-300, RM-5704]

Radio Broadcasting Services; Coeur d' Alene, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Idaho Broadcasting Company, Inc., licensee of Station KCDA(FM), Coeur d' Alene, Idaho, proposing to substitute Channel 276C2 for Channel 276A and to modify its Class A license to specify the new channel.

DATES: Comments must be filed on or before October 5, 1987, and reply comments on or before October 20, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Barry A. Friedman, Wilner and Scheiner, 1200 New Hampshire Avenue NW., Suite 300, Washington, DC 20036 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-300, adopted July 23, 1987, and released August 10, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washngton, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-18687 Filed 8-14-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 87-299, RM-5789]

Radio Broadcasting Services; Rozel, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Lee E. Scott proposing to allot FM Channel 254A to Rozel, Kansas as that community's first FM channel.

DATES: Comments must be filed on or before October 5, 1987, and reply comments on or before October 20, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Donald E. Martin, Esq., 2000 L Street NW., Suite 200, Washington, DC 20036 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-299, adopted July 23, 1987, and released August 10, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-18688 Filed 8-14-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 87-279, RM-5823]

Television Broadcasting Services; Lewisburg, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Sid Shumate, proposing the allotment of UHF Television Channel 59 to Lewisburg, West Virginia, as that community's first local commercial TV service. A site restriction of 12.2 kilometers (7.6 miles) northwest of the city is required.

DATES: Comments must be filed on or before September 23, 1987, and reply comments on or before October 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Sid Shumate, 119 Carlton Road, Charlottesville, VA 22901 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-279, adopted July 16, 1987, and released August 10, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-18689 Filed 8-14-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 87-302, RM-5698]

Radio Broadcasting Services; Palm Springs, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by KPSI Radio Corporation, proposing the substitution of FM Channel 263B1 for 265A at Palm Springs, California, and modification of the license of Station KPSI (FM) accordingly, to provide that community with its third wide coverage area FM service.

DATES: Comments must be filed on or before October 5, 1987, and reply comments on or before October 20, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Joel H. Levy, Esq., Cohn and Marks, 1333 New

Hampshire Avenue, NW, Suite 600, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–302, adopted July 23, 1987, and released August 10, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division Mass Media Bureau.

[FR Doc. 87–18684 Filed 8–14–87; 8:45 am]

BILLING CODE 6712-1-M

---

47 CFR Part 73

[MM Docket No. 87–303, RM–5744]

Radio Broadcasting Services; Santa Rosa, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Visionary Radio Euphonics, Inc., proposing the substitution of FM Channel 269B1 for Channel 269A at Santa Rosa, California, and modification of the license of Station KVRE–FM accordingly, to provide that community with its first wide coverage area FM service. If the proposal should succeed on its merits, finalization thereof must await the grant of a license to cover the construction permit issued to Station KKIQ(FM) (Channel 269A), Livermore, CA.

DATES: Comments must be filed on or before October 5, 1987, and reply comments on or before October 20, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Peter A. Casciato, Esq., Law Offices of Peter A. Casciato, P.C., Media Bldg., 943 Howard Street, San Francisco, CA 94103.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–303 adopted July 24, 1987, and released August 10, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–18685 Filed 8–14–87; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 504, 514, 515, 522, 525, 532, 534, 536, 537, 552, and 553

[GSAR Notice No. 5–87]

Acquisition Regulation; Miscellaneous Changes

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR), which would revise section 514.301–70 to clarify the policy on the consideration of telecopier bids, revise section 515.411–70 to clarify the requirements for abstracting proposals or quotations in negotiated procurements and to clarify the rules regarding disclosure of information regarding negotiated procurements, and section 515.412 to incorporate a class deviation to the FAR provision on late submissions, modifications, and withdrawals of proposals for use by contracting officers in the Federal Supply Service for Multiple Award Schedules, revise section 515.1070 to provide for release of information on unsuccessful offerors in certain circumstances without a formal Freedom of Information Act request, revise section 552.210–78 to incorporate the substance of a November 1984 class deviation for use by the Federal Supply Service, delete the provision pertaining to telecopier submissions, modifications, or withdrawal of bids in section 552.214–71 and reserve the section, to delete the provision pertaining to telecopier submissions, modifications, or withdrawal of proposals in section 552.215–71 and reserve the section, and to make other miscellaneous changes in Parts 504, 522, 525, 532, 534, 536, 537, 553, and Appendix C of the GSAR looseleaf which primarily relates to the interval operations of the agency. The intended effect is to improve the regulatory coverage and provide uniform procedures for contracting under the regulatory system.

DATE: Comments are due in writing on or before September 16, 1987.

ADDRESS: Requests for a copy of the proposal and comments should be addressed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations, 18th and F Streets NW., Room 4024, Washington, DC 20405, (202) 523–3822.

FOR FURTHER INFORMATION CONTACT: Ms. Ida Ustad, Office of GSA Acquisition Policy and Regulations, 18th and F Streets NW., Room 4029, Washington, DC 20405, (202) 566–1224.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this proposed rule. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)* The proposed rule primarily relates to the internal operations of the agency and will not have a significant impact on contractors and offerors. Therefore, no flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.)*

List of Subjects in 48 CFR Parts 504, 514, 515, 522, 525, 532, 534, 536, 537, 552, and 553

Government procurement.

Dated: August 7, 1987.

Ida M. Ustad,

Director of GSA Acquisition, Policy and Regulations.

[FR Doc. 87–18739 Filed 8–14–87; 8:45 am]

BILLING CODE 6820-61-M

Notices

Federal Register

Vol. 52, No. 158

Monday, August 17, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

National Commission on Dairy Policy; Advisory Committee Meeting

Pursuant to provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting.

Name: National Commission on Dairy Policy.

Time and Place: Sheraton Crystal City, 1800 Jefferson Davis Hwy. Arlington, Virginia.

Status: Open.

Matters to be Considered: On August 31 and September 1, the Commission will meet to consider issues related to the dairy price support program, new dairy technologies, and the influence of the program and technologies on the family farm. The meeting on August 31 is expected to review Commission staff work concerning the array of new dairy technology that may emerge in the foreseeable future. The meeting on September 1 is expected to include a presentation concerning the economic status and future of the dairy industry. The Commission will also discuss background materials related to the dairy industry with the Executive Director.

Written statements may be filed before or after the meeting with: Contact person named below.

Contact person for more information: Mr. T. Jeffrey Lyon, Assistant Director, National Commission on Dairy Policy, 1401 New York Ave. NW., Suite 1100, Washington, DC 20005, (202) 638-6222.

Signed at Washington, DC, this 11th day of August 1987.

David R. Dyer,

Executive Director, National Commission on Dairy Policy.

[FR Doc. 87-18737 Filed 8-14-87; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Research Service

National Arboretum Advisory Council; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. (770-776), the Agricultural Research Service announces the following meeting:

Name: National Arboretum Advisory Council

Date: October 18-20, 1987

Time: 9:00 a.m.—4:30 p.m., Oct. 19, 9:00 a.m.—4:30 p.m., Oct. 20

Place: U.S. National Arboretum, 3501 New York Avenue, NE., Washington, DC.

Type of Meeting: Opening to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review progress of National Arboretum relating to Congressional mandate of research and education concerning trees and plant life. The Council submits its recommendations to the Secretary of Agriculture.

Contact Person: Howard J. Brooks, Executive Secretary, National Arboretum Advisory Council, Room 234 Bg-005, BARC-W, Beltsville, MD 20705. Telephone: AC 301/344-3912.

Done at Beltsville, Maryland, this 10th day of July 1987.

Howard J. Brooks,

Executive Secretary, National Arboretum Advisory Council.

[FR Doc. 87-18697 Filed 8-14-87; 8:45]

BILLING Code 3410-03-M

Animal and Plant Health Inspection Service

[Docket No. 87-404]

Change of Official Mailing Address for the Animal and Plant Health Inspection Service

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice serves to advise all interested parties of a change in the official mailing address for the Washington, DC, offices of the Animal and Plant Health Inspection Service (APHIS).

EFFECTIVE DATE: August 17, 1987.

FOR FURTHER INFORMATION CONTACT: Gerald Mainer, Mail Manager, Mail and Records Management Section, Information Management Branch, Administrative Services Division, Animal and Plant Health Inspection Service, 1400 Independence Avenue, SW., Washington DC, 20250. Telephone (202) 447-5366.

SUPPLEMENTARY INFORMATION: APHIS has established a new official mailing address for the Washington, DC, offices. A Washington DC post office box was established to provide more economical and efficient mail services. The Washington DC post office box conversion will preserve and protect the security of all mail from unauthorized opening, inspection, or reading of contents or covers, tampering, delay, or other unauthorized acts.

Any interested party, intending to mail to APHIS offices located in Washington, DC, should use the new post office box address.

New official mailing address: USDA/APHIS/(Name of Division and Office), (Room Number), P.O. Box 96464, Washington, DC, 20090-6464.

Old mailing address: USDA/APHIS/(Name of Division and Office), (Room Number), 1400 Independence Avenue SW., Washington, DC, 20250.

Done in Washington, DC, this 12th day of August, 1987.

Larry B. Slagle,

Deputy Administrator for Management and Budget, Animal and Plant Health Inspection Service.

[FR Doc. 87-18765 Filed 8-14-87; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 87-403]

Selection of Members for the National Animal Damage Control Adivsory Committee (NADCAC)

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) is giving notice that the Secretary of Agriculture intends to select members for NADCAC from among individuals nominated by interested persons and organizations. In order to obtain the broadest

representation on the committee, the Secretary's selection will not be limited to those so nominated. The NADCAC will advise the Secretary of Agriculture on policies, program issues, and research needed to conduct the Animal Damage Control program of APHIS.

FOR FURTHER INFORMATION CONTACT: Gerald J. Fichtner, Deputy Administrator for Animal Damage Control, APHIS, USDA, Room 1624, South Building, 14th and Independence Avenue, SW., Washington, DC, 20250, (202) 447-2054.

SUPPLEMENTARY INFORMATION: On November 6, 1986, and April 17, 1987, APHIS published notices in the **Federal Register** (51 FR 40345, Docket Number 865-411, and 52 FR 12576, Docket Number 87-401), regarding nominations for representation on the NADCAC.

The purpose of this document is to give notice that the Secretary intends to solicit recommendations for membership on NADCAC from interested organizations and individuals. Organizations may recommend individuals for membership who are not associated with their organization. The Secretary's selection of members on NADCAC, however, will not be limited to those nominated. This will enable the Secretary to obtain the broadest possible representation on the committee, in accordance with the Federal Advisory Committee Act and USDA Department Regulation 1043-27. Information about the nomination process may be obtained from Gerald J. Fichtner, Deputy Administrator for Animal Damage Control, APHIS, USDA, Room 1624, South Building, 14th and Independence Avenue, SW., Washington, DC, 20250, 202-447-2054.

Done in Washington, DC, this 13th day of August, 1987.

Bert W. Hawkins,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 87-18773 Filed 8-13-87; 10:13am]

BILLING CODE 3410-34-W

COMMISSION ON CIVIL RIGHTS

Colorado Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission will convene at 12:00 Noon and adjourn at 2:30 p.m. on August 24, 1987, at the Executive Tower Inn, 1402 Curtis Street, Denver, Colorado 80202. The purpose of the meeting is to plan for a series of forums on the impact in Colorado of the implementation of the Immigration Reform Act and continue discussions on the release of the Committee's Hispanic dropout report.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxine Kurtz, or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 7, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-18658 Filed 8-14-87; 8:45 am]

BILLING CODE 6335-01-M

Illinois Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 4:00 p.m. on September 8, 1987, at the Oxford House, 225 North Wabash Avenue, Chicago, Illinois. The purpose of the meeting is to conduct program planning for FY 1988 and to hold a forum on ways by which the Cabrini-Green housing projects in Chicago might be desegregated.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Hugh J. Schwartzberg, or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 10, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-18659 Filed 8-14-87; 8:45 am]

BILLING CODE 6335-01-M

Minnesota Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 4:00 p.m., on August 29, 1987, at the Holiday Inn, 1313 Nicollet Mall, Minneapolis, Minnesota. The purpose of the meeting is to develop program plans and to hold a community forum to obtain information on the status of civil rights and bigotry and violence in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Talmadge L. Bartelle, or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253 (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 10, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-18660 Filed 8-14-87; 8:45 am]

BILLING CODE 6335-01-M

Oklahoma Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Oklahoma Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m., on September 4, 1987, at the Sheraton Century Center, One North Broadway, Oklahoma City, Oklahoma 73102. The purpose of the meeting is to develop program plans and to receive a briefing on the status of the U.S. Commission on Civil Rights and its regional operations.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Charles Fagin or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5)

working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 7, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-18661 Filed 8-14-87; 8:45 am]

BILLING CODE 6335-01-M

Maryland Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maryland Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:30 p.m. on September 1, 1987, at the Omni International Hotel, 101 West Fayette Street, Baltimore, Maryland. The purpose of the meeting is to hear presentations from knowledgeable persons on the topic: Strategies for the Prevention of Bigotry and Violence, to discuss results of the 1987 Regional Conference, and to plan activities for FY '88.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Lorretta Johnson or John I. Binkley, Director of the Eastern Regional Division at (202) 523-5264, (TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 11, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-18738 Filed 8-14-87; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 360]

Resolution and Order Approving the Application of the Sacramento-Yolo Port District for a Foreign-Trade Zone in West Sacramento, CA

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 USC 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Sacramento-Yolo Port District, a political subdivision of the State of California, filed with the Foreign-Trade Zones Board (the Board) on May 8, 1986, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in West Sacramento, California, within the Sacramento section of the San Francisco-Oakland Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant to Establish, Operate, and Maintain a Foreign-Trade Zone in the Sacramento, California Area

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Sacramento-Yolo Port District (the Grantee), has made application (filed May 8, 1986, Docket No. 16-86, 51 FR 18639) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in West Sacramento, California, within the San Francisco-Oakland Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 143 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 6th day of August 1987, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Clarence J. Brown,

Acting Chairman and Executive Officer.

Attest:

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 87-18730 Filed 8-14-87; 8:45 am]

BILLING CODE 3510-DS-M

[ORDER NO. 361]

Resolution and Order Approving the Application of the Brunswick Foreign-Trade Zone, Inc. for a Foreign-Trade Zone in Brunswick, GA

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 USC 81a-81U), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Brunswick Foreign-Trade Zone, Inc., a Georgia private corporation, filed with the Foreign-Trade Zones Board the Board) on November 7, 1986, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Brunswick, Georgia, within the Brunswick Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant to Establish, Operate, and Maintain a Foreign-Trade Zone in Brunswick, Georgia

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Brunswick Foreign-Trade Zone, Inc. (the Grantee), a Georgia private corporation, has made application (filed November 7, 1986, Docket No. 34-86, 51 FR 41993) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Brunswick, Georgia, within the Brunswick Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign trade zone, designated on the records of the Board as Zone No. 144 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable threfore.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 6th day of August 1987, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Clarence J. Brown.

Acting Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87-18731 Filed 8-14-87; 8:45 am]

BILLING CODE 3510-05-M

[Docket No. 10-87]

Foreign-Trade Zone 45, Portland, OR; Application for Subzone Status for Automotive Industrial Marketing Corp.

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Portland, grantee of FTZ 45, requesting special-purpose subzone status for the industrial tool distribution facility of Automotive Industrial Marketing Corporation (AIM) and its subsidy AcraDyne Corporation in Portland, Oregon, within the Portland Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 20, 1987.

The 2.4 acre facility is located at 1000 S.E. Pine Street, Portland. Employing 30 persons, it is used to modify, relabel, repackage and distribute hand-held pneumatic and electric industrial tools and screw fastening robots, used primarily by auto assembly plants. Most of the tools are purchased from foreign sources. AIM's products are distributed in Canada and Mexico, as well as domestically.

Zone procedures will allow AIM to avoid duty payments on the foreign products that are exported. On its domestic sales, the company would be able to defer duty payments. No manufacturing approvals are being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee

has been appointed to investigate the application and report to the Board. The committee consists of: Joseph Lowry (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Clyde Kellay, District Director, U.S. Customs Service, Pacific Region, 511 NW. Broadway, Fed. Bldg., Portland, OR 97209; and Colonel Gary R. Lord, District Engineer, U.S. Army Engineer District Portland, P.O. Box 2946, Portland, OR 97208.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 24, 1987.

A copy of the application is available for public inspection at each of the following locations.

U.S. Department of Commerce, District Office, 1220 SW. 3rd Ave., Rm. 681, Portland, OR 97204

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Rm. 1529, 14th and Pennsylvania, NW., Washington, DC 20230.

Dated: August 10, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87-18732 Filed 8-14-87; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-604]

Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have determined that tapered roller bearings and parts thereof, finished and unfinished (tapered roller bearings, also "TRBs"), from Japan are being, or are likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening material injury to, a United States industry.

EFFECTIVE DATE: August 17, 1987.

FOR FURTHER INFORMATION CONTACT: Marie G. Kissel (202/377-3798) or Mary S. Clapp (202/377-1769), Office of Investigations, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that tapered roller bearings from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673(a)). The margins found for the companies investigated are listed in the "Suspension of Liquidation" section of this notice.

Case History

On March 23, 1987, we made an affirmative preliminary determination (52 FR 9905, March 27, 1987).

On March 31, 1987, we received a request from NTN Toyo Bearing Co., Ltd. ("NTN"), a respondent in the case, to postpone the final determination to no later than the 135th day after publication of our "Preliminary Determination" notice in the **Federal Register.** We granted this request and postponed the final determination until no later than August 10, 1987 (52 FR 11722, April 10, 1987).

On July 6, 1987, the Department held a public hearing. Interested parties submitted comments for the record in their pre-hearing briefs of July 2, 1987, and in their post-hearing briefs of July 14, 1987.

Scope of Investigation

The products covered by this investigation are tapered roller bearings and parts thereof, currently classified under *Tariff Schedules of the United States (TSUS)* item numbers 680.30 and 680.39; flange, take-up cartridge, and hanger units incorporating tapered roller bearings, currently classified under *TSUS* item number 681.10; and tapered roller housings (except pillow blocks) incorporation tapered rollers, with or without spindles, whether or not for automotive use, and currently classified under *TSUS* item 692.32 or elsewhere in the *TSUS.* Products subject to the outstanding antidumping duty order covering certain tapered roller bearings from Japan (T.D. 76-227, 41 FR 34974) are not included within the scope of this investigation. This investigation includes all tapered roller bearings and parts thereof, as described above, that are manufactured by NTN.

If the Department's recission of its revocation of the above cited antidumping duty order with respect to NTN is affirmed by final judicial order, this antidumping determination would not apply to any bearings manufactured by NTN that would be covered by the outstanding antidumping duty order. This issue is being litigated in the Court of International Trade in *The Timken Co. v. United States,* Court No. 82-6-00890.

Fair Value Comparisons

For NTN Toyo Bearing Co., Ltd., we compared the United States price to foreign market value, as described below.

The second company from which we requested a response, Koyo Seiko Co., Ltd. ("Koyo"), limited its reporting of home market sales to those products it considered identical or most similar to the TRBs it sold to the United States. Although requested to do so in the Department's questionnaire, Koyo did nor furnish descriptions of the other bearings it sold in the home market, which would permit us to select the most similar bearings based on the criteria described in the "Such or Similar Merchandise" section of this notice, for calculation of foreign market value based on sales in the home market.

For certain U.S. sales, based on our inability to determine whether Koyo had reported the appropriate similar merchandise home market sales, we based our determination on whether Koyo sold TRBs in the U.S. at less than fair value on the best information otherwise available, in accordance with section 776(b) of the Act. This treatment is in accordance with a ruling by the Court of International Trade in *The Timken Co. v. United States,* 10 C.I.T. ______, 630 F. Supp. 1327, 1338 (1986). The petition alleges price based dumping margins for the period of investigation for Koyo of between 4.5 and 78.4 percent, for an arithmetic average of quarterly rates of 23.7 percent. Since this rate is less than the rate we have calculated for the Koyo bearings for which we used sufficient information, we have adopted the calculated rate as best information available in this context.

We used the data submitted by Koyo on identical merchandise comparisons and the parts that were imported to the U.S. for further manufacturing in calculating foreign market value, because use of this data for these comparisions with U.S. prices did not require a determination of "most similar" bearings. For parts, foreign market value is based on constructed value, because parts are not sold in the home market.

A voluntary response was received from Nissan Motor Co., Ltd., but the Department found the response to be substantially incomplete and, therefore,

unusable for determining whether sales were being made at less than fair value.

The period of investigation is March 1, 1986, through August 31, 1986.

United States Price

For certain sales by NTN and Koyo, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act, since the first sale to an unrelated party was made after importation. For those sales by NTN to the United States where we determined that the merchandise had been purchased by an unrelated party from the manufacturer or producer prior to importation, we based the United States price on purchase price in accordance with section 772(b) of the Act.

For NTN's sales which were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we used purchase price as the basis for determining United States price. For these sales, the Department determined that purchase price was the more appropriate indicator of United States price based on reasons detailed in the preliminary determination.

For NTN and for certain sales by Koyo, we calculated purchase price and ESP based on the packed, f.o.b. and c.i.f., duty paid, delivered prices to unrelated purchasers in the United States. We made deductions for foreign inland freight, ocean freight, marine insurance, U.S. duty, and U.S. inland freight, as appropriate. For ESP sales, we also deducted other expenses normally incurred in selling the merchandise in the United States. We also adjusted for processing performed in the United States.

Foreign Market Value

In accordance with section 773(a) of the Act, we determined that there were sufficient home market sales by NTN and for Koyo to form the basis for foreign market value.

Petitioner alleged that home market sales were made at less than the cost of production and that constructed value should be used to compute foreign market value.

We compared the home market prices to the cost of production, which included materials, fabrication costs, and selling, general, and administrative expenses (SG&A). We used the selling expenses incurred on sales to the level of trade of the sales being compared. When there were no, or insufficent, sales of such or similar merchandise at prices above the cost of production, as defined in section 773(b) of the Act, we used constructed value as the basis for calculating foreign market value. We disregarded all sales of a particular TRB model whenever below-cost sales for that model represented more than 90 percent of all sales for that model during the period of investigation. If below-cost sales of a particular model were not less than 10 percent and not more than 90 percent of total sales for that model during the period of investigation, only the below-cost sales were disregarded. If less than 10 percent of sales of a particular model were sold below-cost during the period of investigation, no sales were disregarded. For the remaining above-cost sales, we calculated foreign market value in accordance with section 773(a)(1)(A).

Where we used constructed value for our comparisons, we used materials and fabrication costs as reported. NTN's general expenses exceeded the statutory minimum of ten percent of materials and fabrication. Therefore, actual general expenses were used in calculating the constructed value. Koyo's general expenses were below the statutory minimum, therefore, we used the 10 percent statutory minimum in calculating Koyo's constructed value. The statutory eight percent for profit was included in the constructed value for both companies because home market profit was less than eight percent. We added U.S. packing costs.

We made circumstances of sale adjustments to constructed value for differences in credit expenses. In addition, where the U.S. sales prices were calculated based on ESP, we made an offset for indirect selling expenses on the U.S. sales against home market indirect selling expenses, in accordance with § 353.15(c) of Commerce's regulations.

For NTN and Koyo, where we found sufficient sales in the home market to form the basis of comparison, we used delivered home market prices. We made deductions for foreign inland freight and discounts, as appropriate. We also deducted home market packing costs and added U.S. packing costs. For comparison to ESP sales, we offset selling expenses incurred on home market sales up to the amount of the indirect selling expenses incurred for sales to the U.S. market, in accordance with § 353.15(c) of our regulations. We made an adjustment for differences in credit terms in accordance with § 353.15 of our regulations. NTN claimed adjustments for differences in technical service expenses, sales commissions, advertising and warehousing expenses. We denied these claims, since they were not directly related to the sales under consideration. These expenses were included in the selling expenses used for purposes of the ESP offset.

NTN claimed that automobile manufacturers and original equipment manufacturers (OEM) should be treated as separate levels of trade. We rejected this argument since automobiles are a type of original equipment and respondent did not demonstrate significant differences in the expenses incurred in selling to these two classes of customers.

Wherever possible, we selected for comparison to each model of tapered roller bearing exported to the United States the identical model sold in the home market. If sales of that model were made at the same commercial level of trade as that of the U.S. sale, then we used as the basis of foreign market value only sales at that level of trade. If no identical merchandise was sold at the same commercial level of trade, we used sales made at the other commercial level of trade. If there were no home market sales of identical merchandise, we attempted to repeat this process for most similar merchandise.

Where there were no sales of identical merchandise in the home market at the same level of trade, we made our comparisons at the other level of trade and adjusted for differences in level of trade, in accordance with § 353.19 of our regulations. The adjustment was based on the difference in selling expenses incurred in selling to OEMs and distributors in the home market.

Such or Similar Merchandise

The parties in this investigation submitted numerous comments on the factors that should be considered in determining which products sold in the home market should be compared to the TRBs sold in the United States. The factors which were suggested as forming appropriate measures of similarity of TRBs sold in the respective markets include outside diameter, inside diameter, width, type of bearing, dynamic load rating, the Y2 factor (Y factor), and the system life. Each of these factors is discussed below:

1. *Outside Diameter*. The outside diameter (OD) of a bearing is the physical measurement between two points of the outermost portion of bearing which are directly opposite each other.

2. *Inside Diameter*. The inside diameter (ID) of a bearing is the physical measurement between two points of the innermost portion of a bearing which are directly opposite each other

3. *Width.* The width is the physical measurement of the radial portion of the bearing.

4. *Type of Bearing.* The type of bearing is defined in terms of various physical characteristics, including a number of rows of rollers, as well as whether or not the bearing has flanges, seals, various configurations of multiple rows of rollers, and whether the bearing is heat treated.

5. *Dynamic Load Rating.* The dynamic load rating is the constant stationary load which a bearing can endure for one million revolutions of the inner ring. Also, dynamic load rating is an accepted international standard.

6. *Y2 Factor (Y Factor).* The Y2 factor measures the effect of thrust loads on the expected life of a bearing and is calculated from the contact angle. It is an accepted international standard which, when combined with dynamic load rating, forms the major component of bearing life.

7. *System Life.* This is a calculation of the number of revolutions a bearing can be expected to perform in a given system or application (such as a gear of a specific model of truck) under specified operating conditions.

Petitioner states that three factors can be used n selecting similar merchandise with very reliable results. These are ID, OD, and system life. Petitioner contends that use of system life is preferable to the use of dynamic load rating because it incorporates radial load as well as thrust factors in the measurement of the characteristics of a bearing. Petitioner concedes that use of dynamic load rating in combination with the Y factor also would incorporate radial load and thrust factors. Petitioner states that the fact that the system life of a specific bearing varies widely depending on the system, or application, is irrelevant, since system life can be calculated using typical applications.

NTN argues that the use of system life as a basis for selecting similar merchandise is inappropriate because universal system life for an individual bearing does not exist. As the parameters of a system change, the life of that system will change since system life is based on the point at which a component of the system is expected to show signs of fatigue. NTN proposes that ID, OD, width, dynamic load rating, the Y factor and the type of bearing be considered. NTN bases its selection of the dynamic load rating and the Y factor on the fact that these measure the physical properties of the individual bearing.

Koyo opposes use of system life because it is not calculated in accordance with industry standards and is calculated differently by various manufacturers of TRBs. Koyo states that the physical measurements of TRBs (ID, OD, and width) are the best criteria for determining similarity because they relate most directly to the physical properties of the TRBs and their production costs.

Petitioner and NTN (but not Koyo) also addressed the issue of how the Department could measure approximate equality in the commercial value of the merchandise compared, as provided in section 771(16)(B)(iii) of the Act.

Petitioner would have the Department pick the most similar product by first considering the system life of a bearing, ranking each bearing in the home market universe from equal or most similar system life to least similar system life. Second, searching among the top 10 percent of the ranked bearings, petitioner would have the Department sift through that 10 percent for a "commercially interchangeable" and similar bearing under 19 U.S.C. 1766(16)(B). If there is no "commercially interchangeable" match within the top-ranked bearings, then the Department should continue down the list of potentially similar bearings to the first part number that is similar within the meaning of 19 U.S.C. 1766(16)(C).

NTN's reaction to the methodology proposed by petitioner is that there must be some factor to measure the outer limits of similar bearing selections. If no limits are set, as petitioner proposed, it is possible that the Department could be left with a situation in which a bearing with a 100 percent degree of deviation in physical factors, a bearing twice the size of the U.S. bearing, but with the same system life, could conceivably be used as the similar merchandise in the home market. NTN's proposed matching methodology is to determine the percentage of deviation for each proposed criterion (ID, OD, widith, dynamic load rating, and the Y2 factor) and then total those variations. The most similar home market bearings would be those in which the sum total of the degree of deviation of each criterion equals 10 percent or less. NTN believes this method of comparison results in realistic "commercially interchangeable" matches. Petitioner's response is that use of NTN's method severely reduces the universe of bearings available for comparison.

DOC Determination

After considering the comments by all parties, we determined that ID, OD, width, type of bearing, dynamic load rating, and the Y factor were appropriate factors for consideration.

The ID, OD and width were selected because they are specific measurements of the physical characteristics of the bearings under consideration.

In determining that the type of bearing was an appropriate criterion, we detemined that bearings containing the same number of rows of rollers could be reasonably compared with each other, whereas bearings with different numbers of rows of rollers could not, because of extreme differences in all relevant criteria for measuring similarity under section 771(16) of the Act. Where there was a home market bearing which contained the same number of rows and had the same special features, we attempted to find a similar bearing within that category before looking at other special features. If none existed, we compared bearings with different special features (other than double rows of bearings) and made adjustments for physical differences in merchandise.

We determined that dynamic load rating and the Y factor were more appropriate measures of similarity than system life, for the following reasons:

1. The dynamic load rating and Y factor are standards used in the industry to calculate the life expectancy of an individual bearing model. As such, they relate directly to the physical properties of the bearings under consideration.

2. Bearing life is a component of the system life calculation. However, bearing life is more closely related to the physical characteristics of a particular bearing model than other elements of the system life formula.

3. Dynamic load rating and the Y factors are included in bearing catalogues issued by producers and, therefore, available to purchasers of bearings who are making decisions regarding appropriate bearings to be used for intended purposes. A purchaser might use this information as the basis for calculating the system life of a specific application along with similar data on other components of the planned system.

4. System life varies widely according to the system parameters and a change of any component of a system can change the system life.

Given the fact that there is no single application for all TRBs and that many TRBs can be used in some, but not all applications, it is not possible to measure approximate equality in terms of commercial value. One must specify a particular commercial application, using the system life formula, in order to measure the commercial value of specific bearings. Therefore, we determined under section 771(16)(C) which home market products reasonably

could be compared to the TRBs sold to the United States.

In this investigation, the parties have not supported the various proposals for the parameters of deviation which would limit reasonable comparisons. The Department has determined that since we are using numerous criteria to make our comparisons, acceptance of wide deviations in individual factors, as proposed by the petitioner, would result in reasonable selections. The degree of physical similarity is significantly reduced under petitioner's method. As for NTN's proposal, limiting possible selections to models in which the sum total deviation was 10 percent or less would leave the Department with too narrow a listing of similar merchandise.

We therefore chose our selections by taking the U.S. bearing and comparing it to all bearings in the home market in which each individual criterion deviation is 10 percent or less. Out of that group of similar bearings, we then picked as most similar the home market bearing in which the criterion with the greatest degree of deviation was smaller than the criterion with the greatest degree of deviation in any of the other similar bearings. We normally limited individual deviations to 10 percent, although where only one factor deviated, we allowed bearings where that factor was slightly over 10 percent.

This methodology relies on the physical properties of the bearings and would give interested parties a predictable basis for determining possible product matches in annual reviews under section 751 of the Act, if such reviews are conducted in the future.

Where cup and cone components were sold in the United States and only sets composed of those identical or most similar were sold in the home market, we compared the U.S. sales of cups and cones to the home market sales of sets by determining the ratio of the direct manufacturing cost of the cup and cone to that of the complete set. This ratio was applied to the home market price of the set to calculate the price equivalent in the home market. NTN argues that this approach is improper because the set is not "such or similar", i.e., not approximately equal in commercial value to the cup or cone. As long as the component cup or cone is "most similar" to the merchandise exported to the United States, we conclude that it is appropriate to use it in the comparison.

Currency Conversion

For ESP comparisons, we used the official exchange rate in effect on the date of sale, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984 (1984 Act). For purchase price comparisons, we used the exchange rate described in § 353.56(a)(1) of our regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

As provided in section 776(a) of the Act, we verified all information relied upon in making this final determination. We used standard verification procedures, including examination of all relevant accounting records and original source documents provided by the respondents on sales and production costs.

Comments

Petitioner's Comments

Petitioner's Comment 1: Petitioner argues that absent a complete listing of U.S. and home market sales, and absent complete and verified cost data, the Department should base the LTFV determination with respect to Koyo on the information set forth in the petition. Koyo, since the beginning of this investigation, acknowledged that it did not submit a complete listing of home market sales, having itself selected those products that it deemed to be similar. Koyo also failed to submit sales information which the Dpeartment needs for determining the foreign market value of the unfinished parts and components used in the production of TRBs under four inches in diameter.

DOC Response: Koyo has reported its U.S. sales of all bearings manufactured in the United States from Japanese parts which are within the scope of this investigation. With regard to the unreported home market sales, we agree and have used the best information otherwise available as described in the "Fair Value Comparisons" section of this notice.

The Department's decision to use the best information for Koyo is consistent with the decision of the Court of International Trade in *The Timken Company v. United States, supra.* Under section 773(a) and section 771(16) of the Act, the Department, not Koyo, must select the "most similar" merchandise sold in the foreign market.

Petitioner's Comment 2: Petitioner argues that "such or similar" merchandise must be identified from the complete listing of home market sales. Koyo, by urging the Department to disregard distributor (aftermarket) sales in the home market, has claimed impermissibly a level of trade adjustment. The Department must decide whether sales should be excluded, since exclusion of any sales from the home market data base destroys the Department's ability to choose "such or similar" merchandise.

DOC Response: We agree. Where we found sales of identical merchandise at the OEM level of trade, we used these sales in our comparisons. We used the best information otherwise available for our comparisons where Koyo suggested comparisons to similar merchandise, and did not report aftermarket sales because we could not identify the most similar products sold in the home market at either level of trade.

Petitioner's Comment 3: Petitioner argues that for NTN, home market prices should be based on weighted-average prices for all sales, rather than limiting the selection of home market sales to those in "usual commercial quantities", as proposed by respondent. This limitation is contrary to the Act, to the regulations, and to Department precedent.

DOC Response: We agree. The definition of "usual commercial quantities" in section 771(17) provides that, if the merchandise is sold "at different prices for different quantities," then the Department must identify the price or prices identified with that quantity that accounts for the greatest aggregate volume sold (emphasis added). In other words, before resorting to the price or prices of a specific aggregate quantity for the purpose of calculating foreign market value, the Department must be satisfied that there is a positive correlation between different quantities and different prices. Absent such a correlation, the Department calculates foreign market value based on the weighted-average of all relevant sales prices, in accordance with section 773(a)(1)(A) of the Act.

The Department's longstanding practice has been to use weighted-average home market prices unless at least 80 percent of home market sales were made at the same price (19 CFR 353.20(b)). NTN has provided no evidence that it charged its home market customers different prices for different set quantities. Information submitted to the Department indicates no specific correlation between price and quantity. Therefore, section 771(17) is inapplicable. The Department has determined that it is appropriate to base foreign market value on the weighted-average of the sales prices of all such or similar merchandise sold in the home market at prices above cost during the period of investigation.

Petitioner's Comment 4: Petitioner argues that for both respondents, credit costs should be based on the discount

rate when adjusting for foreign market value. For NTN, the credit cost due to discounting of promissory notes should be based on the discount rate for promissory notes rather than NTN's corporate interest rate. Also, Koyo's home market credit costs should not be based on the prime short-term interest rate, but on the discount rate. For both respondents, ITA should use the figure for the average discount rate in Japan in the second and third quarter 1986 of 3.5%, as reported in the IMF, *International Financial Statistics*.

DOC Response: We disagree. Consistent with past Department practice, we based our calculations on the borrowing experience of the respondents and the interest rate actually paid.

Petitioner's Comment 5: Petitioner argues that in the home market, for NTN, interest expenses should not be offset by interest income, absent proof that interest income is related to the expense. Absent any confirmation that deposits NTN maintains with its banks are required by NTN's bank in respect to its outstanding loans, it is impossible from the evidence presented to confirm that NTN's deposit balance is in fact a compensating balance. Therefore, the interest rate used for purposes of calculating NTN's interest rate should not be adjusted to account for alleged "compensating balances".

As for Koyo, in reporting interest expenses of American Koyo Corporation (AKC), Koyo has offset interest earned against interest expenses without any demonstration that this practice is reasonable. Under Department practice the respondent must demonstrate that the interest earned is directly related to production and sales of the products under review. Koyo has made no showing that the interest income claimed as an "offset" to interest expenses is derived from deposits required for short-term loans, or from investment incidental to the ordinary course of business. Accordingly, interest expenses on sales in the U.S. market should not be reduced by the amount of interest allegedly earned by American Koyo.

DOC Response: We disagree. Respondent demonstrated that compensating deposits were made pursuant to the discounting of receivables. Under these circumstances, the adjustment is proper.

Petitioner's Comment 6: Petitioner contends that NTN has not demonstrated that its sales in small quantities and trial sales are at prices that are not representative of the price level for large quantity sales of similar bearings. Therefore, petitioner argues that all home market sales should be considered in the ordinary course of trade in making our comparisons, regardless of quantity.

DOC Response: The sales individually involved extremely small quantities of merchandise at prices substantially higher than the prices of the vast majority of sales reported. Most of these sales were later cancelled before the merchandise was invoiced to the purchaser. In the U.S. market, there were no comparable sales. Under the circumstances, we have determined that these sales were not made in the ordinary course of trade.

Petitioner's Comment 7: Petitioner argues that claimed advertising and technical service expenses should be denied as adjustments to foreign market value under 19 CFR 353.15(a). NTN has not established that the advertising was undertaken on behalf of its customers' customers. As for technical service expenses, NTN has not established that the services provided were called for as part of the purchase agreement or were other than good will or sales efforts; nor has it established that such services are directly related to the sales under consideration.

DOC Response: We agree. NTN did not establish that these expenses were directly related to the sales under consideration. Therefore, we have not made these adjustments in our fair value comparisons.

Petitoner's Comment 8: Warehousing expenses should be denied as an adjustment to foreign market value unless incurred as part of the respondents' sales obligation. Even if the warehousing expenses are incurred after the sale, respondents have not established that the bearings shipped to a particular warehouse are identified to a particular customer's contract while in the warehouse. Therefore, petitioner maintains there is no basis upon which the Department can specifically tie warehousing costs to the sales under consideration.

DOC Response: We agree. We determined that the date of sale is the date of delivery of the merchandise because that was the date on which all of the terms of sale were determined. Since these warehousing expenses were incurred prior to the date of sale, consistent with our long-standing practice, we treated those expenses as indirect selling expenses. Therefore, these expenses were used only in calculating the ESP offset.

Petitioner's Comment 9: Petitioner argues that adjustments to foreign market value for differences in merchandise should be limited to variable manufacturing costs. NTN submitted cost of production data for bearing models in two forms: "with and without factory overhead." In its redetermination on remand, the Department followed its consistent precedent and excluded fixed factory overhead from the adjustment amount, and should do the same for this determination.

DOC Response: We agree. We limited the adjustment to the difference in variable costs in accordance with the Department's longstanding practice. See, e.g., *Certain Electric Motors from Japan*, (49 FR 3267, 32629–30 (1984)).

Petitioner's Comment 10: Petitioner argues that there is no basis to adjust for currency conversions, under 19 CFR 353.56(b), given the steady and highly publicized change in the yen/dollar exchange rate. Koyo and NTN did not react to sustained changes in exchange rates that had been obvious for five months prior to the period of investigation by revising prices.

DOC Response: We agree. Although both respondents did submit evidence of price changes due to the rise of the yen, no evidence was submitted showing price adjustments for all customers, nor were the price changes submitted reflective of the 40 percent drop of the value of the dollar against the yen during the period of investigation. Therefore, we have used the official exchange rate as noted in the "Currency Conversion" section of this notice.

Petitioner's Comment 11: Petitioner asserts that the Department should reject NTN's suggestion that adjustments for certain U.S. selling expenses in ESP transactions be made to foreign market value rather than U.S. price. Section 772(e)(2) of the Act requires the deduction from United States price of "all selling expenses" generally incurred in selling the product to the United States. It does not distinguish between direct and indirect expenses or, as NTN would have the Department do, permit the Department to deduct only indirect selling expenses from the price in the United States.

DOC Response: We agree and have deducted both direct and indirect expenses from United States price.

Petitioner's Comment 12: Petitioner argues that it is the respondent's burden to establish that expenses incurred in the United States are "indirect" expenses that qualify as part of our ESP offset under § 353.15(c) of the regulations. Koyo would have the Department consider as indirect selling expenses all sales commissions not predicated on sales volume. Petitioner views Koyo's characterization as an attempt to inflate the amount of

expenses subject to the ESP offset by labeling commissions as 'indirect" selling expenses without demonstrating the basis for the claim. In the absence of proof, the Department should assume that all expenses incurred on U.S. sales are directly related to the sales under consideration.

DOC Response: We disagree. The commissions in question are commissions paid to company employees in lieu of salary, and as such were demonstrated to be indirect expenses.

Petitioner's Comment 13: Petitioner argues that certain corrections should be made to the production costs of American NTN Bearing Manufacturing Corporation (ANBMC), NTN's subsidiary in the United States. During verification the Department apparently discovered that depreciation was calculated for purposes of the response by a methodology different than that ordinarily utilized by ANBMC. The Department at verification also discovered that ANBMC used engineers from Japan. To the extent that NTN or another related party paid salaries of those engineers, those costs should be included in the labor costs allocated to the finishing and assembly of TRBs at ANBMC. Finally, verification disclosed that the president's salary was not included in the reported SG&A. This cost must be included in the calculation of finishing and assembly costs in the United States.

DOC Response: We agree. Depreciation and allocated expenses were recalculated on the basis of the allocation shown in ANBMC's internal financial report, since it provides a more accurate reflection of ANBMC's internal accounting system. Total labor costs include the labor costs of engineers from Japan and have been allocated to the TRB production in the United States. The Department has allocated the president's salary and benefits and included such expenses in the G&A expenses.

Petitioner's Comment 14: Petitioner asserts that NTN reported a commission paid on purchase price transactions. However, to the extent that NTN Bearing Corporation of America (NBCA), a related party acting as the selling agent of NTN in the United States, incurred expenses on purchase price sales that exceeded the commission paid by NTN for those services, such expenses must be deducted from purchase price.

DOC Response: We disagree. Consistent with our policy of not deducting commissions to related parties, we have not deducted commissions paid to NTN's related selling agent in the U.S. market. Nor have we deducted any of NBCA's indirect selling expenses. We only adjust foreign market value in purchase price comparison situations for direct selling expenses incurred in the United States.

Petitioner's Comment 15: Petitioner argues that Koyo's questionnaire response states that there are four categories of technical service expenses which are incurred on U.S. sales: applications engineering, bearing failure analysis, bearing certification, and quality control. Absent a convincing showing to the contrary, all of Koyo's U.S. technical services expenses should be considered to be direct expenses and shold be excluded from the ESP offset amount, consistent with the Department's methodology in the remand proceeding concerning NTN.

DOC Response: We disagree. The Department has determined that these expenses are not directly related to the sales under consideration, and therefore has treated them as indirect selling expenses.

Petitioner's Comment 16: Petitioner argues that Koyo's incomplete and untimely cost data should be rejected. For constructed value, the Department should base foreign market value on the best information otherwise available. As a result of deficiencies uncovered at verification, all information in the original cost of production response should be rejected for the purpose of the final determination, as it understates the cost of producing the merchandise.

DOC Response: We disagree. The Department has verified the revised submission during verification and also verified costs paid to and costs incurred by related subcontractors.

Petitioner's Comment 17: Petitioner argues that for computation of cost of production and constructed value, depreciation expense for both respondents should be recomputed based on petitioner's useful life data of 15–20 years. The result of the ten-year useful life utilized by NTN is to understate substantially NTN's costs.

As for Koyo, the company failed to supply a detailed list of equipment along with the depreciated amounts for each item as requested by the Department. The Department should thus utilize the information on the useful life of bearing equipment supplied by petitioner.

DOC Response: We disagree. The Department has no basis to believe that NTN's calculation of the useful life of its equipment used by NTN was inappropriate. During verification at Koyo, the Department verified the depreciation expenses and a detailed list of its equipment.

Petitioner's Comment 18: Petitioner argues that in computing the cost of production and constructed value for both respondents, interest income not directly related to the production of TRBs should not be offset against interest expense. In reporting interest expenses of AKC, Koyo has offset interest earned against overall corporate interest expenses without any demonstration that this practice is reasonable.

DOC Response: We agree. The net interest expense was modified by eliminating any other income or expense not incurred in the ordinary course of business for the production of TRBs.

Petitioner's Comment 19: Petitioner asserts that in the absence of product-specific cost variances for two of NTN's plants, the Department should apply the variances for TRB production at a third plant to the standard costs at those two plants, since variances at that plant are representative of the variance from TRB production.

DOC Response: We disagree. Although the cost variances for these two plants may not be representative of variances for TRBs, no adjustment was made since the cost incurred for subcontracting certain processes was an integral part of the accounting system.

Petitioner's Comment 20: Petitioner argues that for NTN, to the extent that labor and overhead costs at two plants were aggregate figures including a large number of products other than TRBs, production costs should be adjusted to reflect NTN's labor costs associated with the production of TRBs at a third plant.

DOC Response: We disagree. Since the costs incurred for subcontracted work are an integral part of the labor and factory overhead, the Department did not adjust these costs.

Petitioner's Comment 21: Petitioner argues that NTN claimed at verification that R&D projects at one of its laboratories during the period of investigation did not relate directly to TRB production. This claim was not supported by evidence verified. Accordingly, research and development costs should be included in corporate G&A.

DOC Response: We agree. The Department has included such expenses in the G&A.

Petitioner's Comment 22: Petitioner asserts that the Department may not apply an ESP offset to constructed value because such a deduction contravenes the statutory requirement that constructed value include an amount for general expenses. Also, section 772(e)(1)(B) requires that the amount of

general expenses included in constructed value be not less than ten percent of the cost of production. Thus, deduction of indirect homemarket selling expenses under section 773(c)(1)(B) is a nullity.

DOC Response: We disagree. The Department is required, by section 773(3) of the Act and § 353.10(e) of the Commerce regulations, to reduce to ESP by the amount of the selling expenses incurred by, or for the account of the exporter in the United States.

Section 773 of the Act requires us to make adjustments to foreign market value for differences in circumstances of sale, and § 353.15(c) of the Commerce Regulations specifies that, in making comparisons using exporter's sales price, we make a reasonable allowance for actual selling expenses incurred in the home market, up to the amount of the selling expenses incurred in the United States market. This adjustment is not limited to cases in which sales form the basis of foreign market value: § 353.15 applies to "sales, or other criteria applicable, on which a determination of foreign market value is to be based". In *Cellular Mobile Telephones and Subassemblies from Japan* (50 FR 45447, 10/31/85, we noted that:

> Section 773(a)(4)(B) of the Act provides that where it is established that the amount of any difference between the United States price and the foreign market value is due to differences in circumstances of sale. 'due allowance shall be made.' Section 773(a) of the Act does not distinguish constructed value from any other method of determining foreign market value. Thus, circumstances of sale adjustments [sic] are required where constructed value is used as the basis for foreign market value, just as they are required where home market [sic] or third country prices are used.

Similarly, in *Spun Acrylic Yarn from Italy* (50 FR 35849, 9/4/85), we stated that: "Even when constructed value is the basis for foreign market value, such constructed value is subject to circumstance-of-sale adjustments. . . Adjustments for circumstances of sale are, by definition, limited to consideration of a seller's marketing practices. . . ."

Contrary to petitioner's assertion, the constructed value includes general expenses associated with the home market merchandise, not with the U.S. merchandise or with merchandise sold in all markets; thus, an adjustment to constructed value for U.S. selling expenses is appropriate. Absent such as adjustment, the Department would not be making a reasonable comparison of values in the two markets.

The adjustment for circumstances of sale described above does not nullify section 773(e)(1)(B) because the Department makes the appropriate calculation under that provision *before* making the adjustment under section 773(a)(4)(B).

Petitioner's Comment 23: Petitioner argues that the Department should exercise its discretion to deduct a reasonable resale profit for sales made through NBCA. The International Antidumping Code, implemented as part of U.S. law by the Trade Agreements Act of 1979, requires that the agency deduct a reasonable profit earned by the domestic subsidiary. In accordance with the Congress' intent, the Department should make such an adjustment.

DOC Response: In *The Timken Company* v. *United States, supra*, the Court of International Trade rejected plaintiff's argument that the word "commissions" in section 204 of the 1921 Act includes profits. The court pointed out that the relevant language of the 1967 International Antidumping Code, which is identical to that of the 1979 Code, "was never perceived as the equivalent of section 204 of the 1921 Act but, to the contrary, was regarded as 'consistent' with that section only because the [1967] Code provision was not viewed as mandatory." (*Id.* at 1347.) Nothing in the legislative history of the 1979 Act suggests that Congress intended to alter the meaning of the term "commissions" when it enacted section 772(e)(1). On the contrary, the legislative history of the Act states that section 772 "reenacts the provisions of the Antidumping Act [of 1921] with respect to ['purchase price' and 'exporter's sales price'] with one substantive change and one clarifying change." S. Rep. No. 96–249 at 93 (1979). Neither of these changes concerns the meaning of the word "commission". The Department interprets the word "commission" in section 772(e)(1) of the Act according to its common meaning and in a manner consistent with the legislative history of that section and its predecessor, section 204 of the 1921 Act, in which the word "commissions" first appeared. There is no other provision in the U.S. law under which the Department could deduct profit. The relevant language of the 1979 Code, like that of the 1967 Code, is not mandatory.

Petitioner's Comment 24: Petitioner argues that the Department should not establish separate duty rates for finished and unfinished products. The class of kind of merchandise that is subject of the investigation includes all tapered roller bearings, including unfinished tapered roller bearings. Thus, a single rate is appropriate.

DOC Response: We agree. See DOC response to Respondents' Comment 2.

Caterpillar's Comment: Caterpillar, Inc., an importer of TRB's from Japan, requests that the Department publish separate cash deposit rates for purchase price and exporter's sales transactions, or, in the alternative, a separate rate for sales to Caterpillar.

DOC Response: Based on our consistent past practice for fair value investigations of publishing only one margin rate for a company where both purchase price and ESP sales are involved in the analysis, we are publishing only one margin rate for NTN.

Nissan's Comment: Nissan argues that for the final determination, the Department must analyze its questionnaire response and issue a final determination that Nissan had no sales at less than fair value. Nissan submits that the reasons offered by the Department in its refusal to analyze further Nissan's questionnaire responses and requested supplemental responses are without merit. It is physically impossible for Nissan to retrieve individual invoices requested by the Department due to the small number of tapered roller bearings sales subject to review and the large volume of total parts sales. Nissan feels information already submitted complies substantially with the Department's original request for information.

DOC Response: We disagree. By letter dated May 4, 1987, and a phone conversation of May 21, 1987, we informed Nissan that its response was incomplete and unusable. The Department cannot accept Nissan's request that we use only a few sales and a "methodological" approach to verify adherence to a home market price list. To adequately verify adherence to a home market price list, the Department would need several complete months worth of individual sales date at a minimum. Furthermore, we would have to be able to verify actual sales from any of the six months within the period of investigation. Nissan indicated that this would not be possible unless Department officials looked through thousands of invoices at verification to find sales of the TRBs involved.

The Department views Nissan's request as tantamount to requiring the Department to compile a response for the company at the verification site. This is totally unacceptable. Therefore, we found Nissan's voluntary response unverifiable and unusable for determining sales at less than fair value.

Respondents' Comments:

Respondents' Comment 1: Respondents urged the Department to apply its special currency conversion provision because of the drastic appreciation of the yen between September 1985 and mid-1986. Specifically, NTN offers two suggestions:

1. Utilize the most recent quarterly exchange rate that existed prior to the governmental revaluation of the yen—the certified rate for the third quarter of 1985, or
2. Utilize the certified quarterly exchange rate for the calendar quarter preceding the date on which the products entered NBCA's inventory.

Koyo asks that the Department use the rate for the third quarter of 1985 or, alternatively, lag the exchange rate by 90 days. Because the yen/dollar exchange rate did not stabilize until July 1986, a reasonable time thereafter should be allowed for price revisions.

DOC Response: We disagree. See DOC response to Petitioner's Comment 10.

Respondents' Comment 2: Koyo argues that the Department should calculate separate margins for unfinished TRB components and finished TRBs. In support of this, Koyo points to an earlier Department determination that unfinished TRB components are not in the same "class or kind of merchandise" as finished TRBs.

DOC Response: We disagree. The petition in the earlier investigation was limited to finished TRBs and, therefore, parts were not considered part of the "class or kind of merchandise" in that investigation. The petition in this investigation covers both finished TRBs and parts. On the basis of the product coverage of the petition, we have determined that the finished TRBs and parts are one "class or kind of merchandise." For purposes of this investigation, we have published one rate for the "class or kind of merchandise" sold be each respondent in accordance with Department practice, except for the separate purchase price rate for NTN.

Respondents' Comment 3: Koyo requests the Department to exclude home market sales to Toyota from its calculation of foreign market value. Pursuant to § 353.22(b) of the Commerce regulations, the Department must exclude sales to related parties if these transactions are not made at arm's length prices. Transactions between Koyo and Toyota are, in fact, transfers between related parties and are not at arm's length.

DOC Response: We agree. We have reviewed the prices between Koyo and Toyota and found that they do not represent arm's length sales transactions because these transactions were made at substantially lower prices than those for sales to unrelated parties. We therefore excluded such sales from our analysis.

Respondents' Comment 4: Koyo argues that, contrary to petitioner's assertions, Koyo's exclusion of aftermarket sales from its U.S. sales listing was not done unilaterally. Koyo pointed out to the Department that it had not reported these sales early in the investigation, and the Department did not request further information. Koyo also argues that the Department should exclude home market sales in the aftermarket in calculating foreign market value.

DOC Response: See DOC response to Petitioner's Comment 2. The Department's questionnaire required respondent to report sales at all levels of trade.

Respondents' Comment 5: Koyo requests that the Department compare U.S. sales of journal roller bearings to third country sales. Because Japan's narrow-gauged railway system uses home sealed-type cylindrical roller bearings and not the tapered roller bearings used in the standard guage railway systems of the U.S., there are no home market sales of tapered journal roller bearings or "similar" merchandise. Pursuant to the criteria of § 353.5(c) of the Commerce regulations, the most appropriate third country market for comparison purposes is Canada. Price data submitted and verified for Koyo's Canadian sales should be used by the Department in calculating foreign market value for tapered journal roller bearings.

DOC Response: This point was not raised by Koyo until its pre-hearing brief filed with the Department on July 2, 1987. To quote from Koyo's January 5, 1987, response p. 15, "App. B–4 lists all sales from Koyo to KCU (Koyo Corporation of the United States of America)." Nothing in the response narrative indicated that third country sales data had been submitted, nor did any information contained on Koyo's computer printouts indicate submission of Canadian sales information. Because the Department was unaware of these sales, the Department did not verify the relevant data. Furthermore, Koyo did not furnish cost data on these bearings. However, since journal roller bearings constitute a very small portion of Koyo's U.S. sales, we did not include them in our analysis.

Respondents' Comment 6: Koyo argues that petitioner's allegation that certain equipment related to the heat treatment process could possibly have been acquired at less than market value, absent any credible evidence, is not only speculative but also untimely, coming as it does after verification. Koyo maintains that its depreciation expenses were satisfactorily verified, and there is no legal basis to use any information other than that submitted by Koyo to the Department.

DOC Response: We agree. The Department verified the method of depreciation and depreciation expenses. THERE WAS NO BASIS FOR THE Department to believe that certain equipment was acquired at less than market value.

Respondents' Comment 7: Koyo, in answering petitioner's assertion that the verification report fails to treat adequately the issue of scrap produced as a by-product of bearing manufacture, maintains that Koyo's scrap revenue is very small, that the amount was verified, and that no discrepancies were noted. In Koyo's view, this issue was covered adequately at verification.

DOC Response: We agree. The Department verified necessary supporting documentation, such as the company's journal of scrap revenue and invoices.

Respondents' Comment 8: Koyo maintains that its response to the Department on inventory and transportation costs related to subcontractor processing is sufficient, despite petitioner's allegation that this is not the case.

DOC Response: We agree. The Department has verified costs related to subcontractor processing.

Respondents' Comment 9: Koyo maintains that there is no reason to use information other than that submitted by Koyo and verified by the Department concerning labor cost. All labor costs were verified.

DOC Response: We agree. The Department has verified all labor costs, both direct and indirect.

Respondents' Comment 10: Koyo maintains that petitioner's assertion that Koyo "may" have obtained goods and/or services from either related or unrelated subcontractors at prices less than cost is completely unsupported. Koyo submits that the prices charged by all its subcontractors are at prices generally reflected in similar arm's length transactions and therefore are at market value. There being no credible evidence of record to the contrary, these prices must and should be accepted.

DOC Response: We agree. The Department has verified subcontracted costs to both the related and unrelated subcontrators. There was no basis for the Department to believe that Koyo may have obtained them at prices which were less than arm's length, or less than the related subcontractor's cost.

Respondents' Comment 11: Koyo maintains that documentation on depreciation expenses was comprehensively analyzed and reviewed at verification, contrary to petitioner's assertion this was not case. Koyo maintains that there is no reason for the Department to use any other source of information for depreciation expenses, since a detailed list of equipment, along with the depreciation expense in the current period of each item was made available at verification and was verified.

DOC Response: See DOC response to petitioner's Comment 17.

Respondents' Comment 12: Koyo finds petitioner's statements regarding the reporting of AKBMC-produced 0–4" TRB sales to be grossly misleading. Koyo asserts that Section E–5 of its response is a listing of all such sales to OEM customers, and believes petitioner's confusion arises from the fact that computer problems prohibited the Department from using these sales in its preliminary determination, a problem that has since been resolved.

DOC Response: Koyo submitted a corrected reporting of these sales in a revised tape dated July 8, 1987.

Respondents' Comment 13: NTN argues that the Department should use only those sales made in the usual commercial quantity when calculating foreign market value. NTN maintains that the law (19 U.S.C. 1677(17)) speaks in terms of identifying the usual "quantity," not the usual price, as has been suggested by petitioner. There is no basis for the Department to reject NTN's position with regard to usual commercial quantities.

DOC Response: See DOC response to "Petitioner's Comment 3."

Respondents' Comment 14: The Department should adjust the foreign market value for differences in circumstances of sale and ESP offset using credit expenses, technical service expenses, sales commissions, advertising, and warehouse expenses, for NTN.

NTN asserts that petitioner's allegation that NTN's claimed adjustments to foreign market value are not factually supported and that verification has raised doubts as to the factual basis on which to make these adjustments is unfounded. NTN answers each of petitioner's points as follows:

(1) NTN challenges petitioner's allegation that there is no evidence that the discounts claimed by NTN are not directly related to the sales in question. NTN maintains that the Department's verification report demonstrates petitioner's allegation to be factually incorrect, and that these same discounts were claimed by NTN in the remand case and granted by ITA. Thus, they should be granted here.

(2) Regarding credit expense, NTN maintains that this expense was fully verified. Moreover, the expense is based on NTN's actual experience and not "market research". NTN asserts that the ITA may not reject a company's actual experience on the basis of some hypothetical experience alleged by petitioner. There is no basis for rejecting NTN's claim since this claimed expense is supported by substantial evidence of record which has been verified.

(3) Regarding the ESP offset, NTN maintains that its claims for indirect selling expenses have been fully substantiated in the verification report. NTN further points out that they have not, as alleged by petitioner, sought to include general corporate expenses unrelated to selling. These same expenses have been previously allowed by the ITA in the remand case.

(4) As with FMV expenses, NTN maintains that petitioner's allegations with regard to ESP expenses are incorrect, and that NTN has fully reported all expenses requested by ITA. NTN asserts that all interest expenses have been fully accounted for as either direct or indirect selling expenses. NTN has reported inventory carrying expenses fully and finds no basis on which to impute any other interest expense in addition to that which has been reported.

(5) On its purchase price transactions, NTN points out that it paid a commission to a related party, and in keeping with longstanding practice, ITA should disregard this related company commission.

DOC Response: We agree and have treated the subject expenses accordingly.

Respondents' Comment 15: NTN contends that the calculation of the "cost of producing" the merchandise for purposes of determining whether sales were made below cost under section 773(b) of the Act was arbitrary and contrary to law because certain costs, in addition to those incurred in producing the merchandise, were included. The language of the Act (19 U.S.C. 1677b(b)) provides that it is the cost of producing the merchandise in question that is to be considered when determining whether sales were made below cost, not the cost of producing and selling the merchandise. The Department has misinterpreted Congressional intent by attempting to include sales and administrative expenses in such costs.

DOC Response: We disagree. Section 773(b)(2) provides that merchandise be sold "at prices which permit recovery of all cost . . . " This can only be determined if the costs and prices are compared on an equal basis. Therefore, in calculating cost of production it is appropriate to include selling, general and administrative expenses since these clearly are part of the cost of the merchandise in question.

Respondents' Comment 16: NTN asserts that the Department's use of an absolute percentage when determining whether to reject sales below cost of production is arbitrary and contrary to law. The 10/90 test as applied by the Department does not measure whether all costs are recovered over a reasonable period of time. The test does not consider profitability or the extent to which sales are made above the cost of production. The only factor used in the test is quantity and that does not provide the Department with data on which to judge whether all costs are recovered. The Department must reject its current 10/90 test and adopt one that is reasonable under the factual circumstances of this case and consistent with law. The Department must explain the basis for rejecting below-cost sales in this case. Only if it promulgated the 10/90 test as a rule in accordance with the Administrative Procedures Act (5 U.S.C. 353) could it apply the percentages without explaining its conclusions.

DOC Response: We disagree. Section 773(b) of the Act requires the Department to reject home market sales made at less than the cost of production if such sales (1) were "made over an extended period of time and in substantial quantities," and (2) do not permit the company to recover all costs "within a reasonable period of time in the normal course of trade."

The Department's 10/90 test is a reasonable guideline or interpretive rule, a statement of current policy, for determining whether sales have been made in substantial quantities. Above 10 percent, the Department reasonably may infer that below-cost sales are systematic and in substantial numbers unless there is evidence to the contrary. Wherever sufficient information to the contrary is presented, the Department does not apply the 10/90 test. *See, e.g., Fall-Harvested Round White Potatoes from Canada,* (48 FR 51669, 1983) affirmed, *Southwest Florida Winter*

Vegetable Growers v. United States, 5 ITRD 2019, 2023 (CIT, 1984) (50 percent test applied). Similarly, unless the respondent demonstrates that we should examine a particular period, the Department considers the period of investigation "an extended period of time." In this investigation, NTN offered no evidence to suggest that 10 percent or more of total sales during the period of investigation constitutes less than "substantial quantities" over "an extended period of time." It provided no evidence based on its particular circumstances or the particular circumstances of the Japanese bearing industry.

NTN submitted no information indicating that costs or prices were changing to an extent that would permit the company to recover all costs within any reasonable period of time. Therefore, the Department concludes that NTN's substantial number of below-cost sales during the period of investigation will not permit the company to recover all costs "within a reasonable period of time in the normal course of trade."

Respondents' Comment 17: Respondents argue that the Department incorrectly considered technical service and advertising expenses in the U.S. as direct expenses.

DOC Response: We agree. The U.S. advertising reviewed at verification was general in nature and directed at purchasers of TRBs as opposed to the customers' customers. The technical service expenses were mainly salaries of technicians and the services performed were not based on contract requirements. Therefore, we determined that these are properly treated as indirect selling expenses.

Repondents' Comment 18: NTN alleges that the Department's deduction of "indirect" selling expenses from the U.S. price was contrary to law because differences in circumstance of sale adjustments are to be made to foreign market value. NTN submits that the Department's practice of deducting direct selling expenses from U.S. price as a means of making such an adjustment results in an upward distortion of the weighted average margin. The Department incorrectly deducted direct selling expenses (which are circumstance of sale adjustments) from the U.S. price instead of adjusting the foreign market value for the difference in the circumstances of sales as required by the Act (19 U.S.C. 1677b(a)(4)(B)).

DOC Response: We disagree. See DOC response to Petitioner's Comment 11.

Respondents' Comment 19: NTN maintains that accounting methods followed by NTN Toyo are in accord with generally accepted accounting principles in Japan, have been acceptable to the Japanese government in NTN Toyo's reporting to the Ministry of Finance, and found by the Department in the remand case to be reliable and accurate, going against petitioner's allegation that the system of accounting used is unacceptable.

For the same reasons, petitioner's allegations on reporting of depreciation, overhead, and R&D must also be rejected. In the case of R&D, NTN asserts that there is no basis on which to increase COP for the products under investigation for theoretical R&D that is totally unrelated to the subject products. There must be some reasonable and factual basis for such an allocation of cost. In the absence of such a basis, respondent asserts there should be no addition for R&D.

DOC Response: We disagree. See DOC response to Petitioner's Comment 21.

Respondents' Comment 20: Counsel for NTN rejects any inference made by petitioner that ANBMC did not disclose adjustments made to all factory costs incurred. NTN maintains that where adjustments were made, the adjustments were fully explained and supporting documentation was provided. ANBMC's costs as reported should be used to calculate ESP for the products involved.

DOC Response: The Department agrees in part. While the Department does not agree with respondents's allegation that the accounting system for two plants was found to be accurate for the products under investigation, no adjustment was made because the costs under consideration were an integral part of the system.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of tapered roller bearings from Japan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall continue to require a cash deposit or the posting of a bond on all entries equal to the estimated average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturers/producers/exporters	Average margin percentage
Koyo Seiko Co., Ltd	70.44
NTN Toyo Bearing Co., Ltd	47.05
All Others	47.57

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation wil be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on tapered roller bearings from Japan entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

August 10, 1987.

Lee W. Mercer,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 87-18735 Filed 8-14-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-087]

Portable Electric Typewriters From Japan; Final Results of Administrative Review of Antidumping Duty Order; Correction

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review; correction.

On January 14, 1987, the Department of Commerce published the final results of its administrative review of the antidumping duty order on portable electric typewriters from Japan (52 FR 1511).

The results for one firm were incorrect due to a computer programming error. We have corrected those results and have determined that the following margin exists for Brother Industries, Ltd.:

Time period	Margin (percent)
5/21/81–5/20/82	0.08

Because the weighted-average margin for Brother Industries, Ltd. is less than 0.5 percent, and therefore de minimis for cash deposit purposes, the Department waives the deposit requirement for this firm.

EFFECTIVE DATE: August 17, 1987.

FOR FURTHER INFORMATION CONTACT: David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

Date: August 3, 1987.

[FR Doc. 87–18734 Filed 8–14–87; 8:45 am]

BILLING CODE 3510–DS–M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments; Case Western Reserve University et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87–102. Applicant: Case Western Reserve University, Cleveland, OH 44106–1712. Instrument: FTI Spectrophotomer, Model DA3.10. Manufacturer: Bomem Inc., Canada. Intended Use: See 52 FR 7916, March 13, 1987. Reasons For This Decision: The foreign instrument provides an unapodized resolution of 0.21 cm^{-1} and an extended frequency range.

Docket No.: 87–121. Applicant: Yale University, New Haven, CT 06511. Instrument: Mass Spectrometer, Model MAT 251 EM and Accessories. Manufacturer: Finnigan Mat, West Germany. Intended Use: See notice at 52 FR 10395, April 1, 1987. Reasons For This Decision: The foreign instrument provides an internal precision of 0.006°/oo, and external reproducibility of ± 0.02°/oo, on a sample size of less than 0.2μ Mol and is capable of rapid switch between CO_2 and SO_2 measurement (10 measurements within 5 min.).

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intened to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–18736 Filed 8–14–87; 8:45 am]

BILLING CODE 3510–DS–M

National Bureau of Standards

Announcement of NBS/OSI Workshop for Implementors of OSI

The Institute for Computer Sciences and Technology at the National Bureau of Standards (NBS) announces four (4) workshop sessions to discuss the continued development of international computer network protocols. The following constitutes the schedule for the workshops through December 1988. The dates are firm:

February 1–5, 1988
May 2–6, 1988
August 22–26, 1988
December 12–16, 1988

(The meetings will be hosted by NBS and will be held at the National Bureau of Standards, Gaithersburg, Maryland.)

The workshops will cover protocols in seven layers of the ISO Reference Model. Attendance at the workshops is limited due to space requirements and the size of the conference facility; therefore, registration is on a first come, first served basis with recommended limitation of two participants per company. A registration fee will be charged for attending the workshops. Participants are expected to make their own travel arrangements and accommodations. NBS reserves the right to cancel any part of the workshops.

To register for the workshops, companies may contact: OSI Workshop Series, Attn.: Lawrence Keys, National Bureau of Standards, Building 225, Room B–217, Gaithersburg, MD 20899, Telephone: (301) 975–3604.

The registration request must name the company representative(s) and specify the business address and telephone number for each participant. An NBS representative will confirm workshop registration reservations by telephone. For additional information, contact Robert Rosenthal (301) 975–3603.

Date: August 11, 1987.

Ernest Ambler,

Director.

[FR Doc. 87–18673 Filed 8–14–87; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

[P77#30]

Endangered Species; Application for Permit: National Marine Fisheries Service, Southeast Fisheries Center

Notice is hereby given that an Applicant has applied in due form for a permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. Applicant: National Marine Fisheries Service Southeast Fisheries Center 75 Virginia Beach Drive Miami, Florida 33149–1099.

2. Type of Permit: Scientific Research.

3. Name and Number of Endangered Species: Loggerhead sea turtles (*Caretta caretta*): 48.

4. Summary of Activity: The turtles will be placed at various distances from underwater explosions for assessment of lethal and sublethal values. Pre and post physiological studies will be performed on the animals.

5. Location of Activity: Gulf of Mexico.

6. Period of Activity: 1 year.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and habitat Conservation, National Marine Fisheries Services, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Date: August 11, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-18764 Filed 8-14-87; 8:45 am]

BILLING CODE 3510-22-M

[P161]

Marine Mammals; Issuance of Permit: Dr. Gerald L. Kooyman

On May 14, 1987, notice was published in the Federal Register (52 FR 18263) that an application had been filed by Dr. Gerald L. Kooyman, Physiological Research Laboratory, A-004, Scripps Institution of Oceanography, University of California, La Jolla, California 92093 to take Weddell seals (*Leptonychotes weddelli*) and import muscle biopsies.

Notice is hereby given that on August 11, 1987 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 North Connecticut Avenue NW., Rm. 805, Washington, DC;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Dated: August 11, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-18763 Filed 8-14-87; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amending and Establishing Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

August 12, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 18, 1987. For further information contact Ross Arnold, International Trade Specialist (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535-6736. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to amend the import restraint limits for cotton and man-made fiber textile products in Categories 336, 359, 636, 637 and 642, produced or manufactured in Singapore and exported during the period January 1, 1987 through December 31, 1987. In addition, the Commissioner is also directed to establish import restraint limits for cotton and man-made fiber textile products in Categories 313, 613 and 625 for the same twelve-month period.

Background

A CITA directive dated December 16, 1986 (51 FR 45797) established import restraint limits for cotton, wool and man-made fiber textile products in Categories 300/301, 310/318, 311-317, 319-330, 332, 336, 333/633, 345, 349, 350, 351/651, 352/652, 353/354/653/654, 359-369, 400-434, 436-444, 445/446, 447, 448, 459-469, 600-603, 605-630, 632, 636, 637, 642-644, 649, 650, 659-S, 659-V, 659-O and 665-670, as a group, and designated individual limits within the group, including Categories 336, 359, 636, 637 and 642, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 31 and June 5, 1986, as amended, between the Governments of the United States and Singapore, the two governments have agreed to further amend their bilateral agreement to increase the 1987 Designated Consultation Levels for cotton and man-made fiber textile products in Categories 313, 336, 359, 613, 625, 636, 637 and 642. The Committee for the Implementation of Textile Agreements has decided to control imports of cotton and man-made fiber textile products in Categories 313, 613 and 625 at the agreed levels.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 20768) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the Federal Register.

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 12, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 16, 1986, issued to you by the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1987, and extends through December 31, 1987.

Effective on August 18, 1987, the directive of December 16, 1986, is hereby amended to include amended and new limits for cotton and man-made fiber textile products in the following categories, pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 31 and June 5, 1986, as amended [1]:

Category	12-mo limit [1]
313	3,085,000 square yards
336	100,000 dozen
359	639,131 pounds
613	2,600,000 square yards
625	336,410 pounds

[1] The agreement provides, in part, that specific limits may be increased by not more than seven percent during an agreement year, provided that an equal quantity in square yards equivalent is deducted from another specific limit.

Category	12-mo limit [1]
636	160,000 dozen
637	100,000 dozen
642	125,000 dozen

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

Import charges for Categories 313, 613 and 625 which have already been made to the group limit are to be retained. Categories 313, 613 and 625 are to remain subject to this group limit.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-18719 Filed 8-14-87; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Board of Trade ("CBT") has applied for designation as a contract market in the CBOE (Chicago Board Options Exchange) 250 Stock Index. The Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before October 16, 1987.

ADDRESSS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Stret, NW., Washington, DC 20581. Reference should be made to the CBT CBOE 250 Stock Index futures contract.

FOR FUTURE INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7227.

Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Future Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CBT in support of the application for contract market designation may be avilable upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CBT in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by October 16, 1987.

Issued in Washington, DC on August 11, 1987.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 87-18666 Filed 8-14-87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Acquisition of Commercial Products and Other Nondevelopmental Items; Pilot Contracting Activities Program

AGENCY: Under Secretary of Defense (Acquisition), DOD.

ACTION: Notice.

SUMMARY: The Department of Defense is firmly committed to making changes to Defense acquisition necessary to enable us to buy more commercial products and other nondevelopmental items (NDI). Part of this effort revolves around identifying those facets of our system which impair our ability to acquire commercial products where they meet our needs. Once the areas are identified, actions can be taken to evaluate and, where feasible, eliminate or lessen the impact of these stumbling blocks. The Under Secretary for Acquisition has initiated a Pilot Contracting Activities program to help identify impediments from our point of view. We suspect that there are contractual provisions, regulations, and statutes, that we may not recognize as impediments, but which do, in fact, keep us from getting the best that the commercial market has to offer. Your help in specifically identifying these areas and their impact (cost) along with suggested remedies will be appreciated. The input resulting from this request will be used, along with other data, to develop the Secretary's report to Congress on this issue as required by the Defense Acquisition Improvement Act.

DATE: Comments should be received by October 1, 1987.

ADDRESS: Comments should be forwarded to Assistant for Commercial Acquisition, OASD(P&L) PS/SDM, Room 2A318, Pentagon, Washington, DC 20301-8000.

FOR FURTHER INFORMATION CONTACT: Greg Saunders, Assistant for Commercial Acquisition, OASD(P&L) PS/SDM, Room 2A318, Pentagon, Washington, DC 20301-8000, Telephone 202/695-7915.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 12, 1987.

[FR Doc. 87-18726 Filed 8-14-87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Procedures for Consideration of Identification of Remains by the Armed Forces Identification Review Board

AGENCY: US Army Military Personnel Center (MILPERCEN), Department of the Army.

ACTION: Final Notice.

SUMMARY: Notice is hereby given that the Deputy Chief of Staff for Personnel, U.S. Army, has adopted procedures to be used by a recently established Armed Forces Identification Review Board (AFIRB) which reviews recommended identification of remains made by the U.S. Army Central Identification Laboratory, Hawaii (CILHI), of the United States military personnel whose death occurred during the Vietnam Conflict, or other recommended identifications referred to it by competent authority, and to take action to approve or disapprove the recommended identifications.

DATES: The AFIRB Procedures are effective as of 1 August, 1987.

ADDRESSES: Copies of the AFIRB Procedures are published in the Federal Register for public inspection.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Jim Cole at the address given below; telephone 202/325-7960, (AUTOVON) 221-7960: Commander, MILPERCEN, ATTN: DAPC-PDC-M, Alexandria, VA 22331-0400.

SUPPLEMENTARY INFORMATION: The AFIRB Procedures have been coordinated with each military service and National League of POW-MIA Families.

Procedures for Consideration of Identification of Remains by the Armed Forces Identification Review Board

July 30, 1987.

1. Purpose

This document prescribes procedures for review and action by the Armed Forces Identification Review Board (AFIRB) upon recommended identifications of remains.

2. References

a. Title 10 United States Code, sections 1481 and 1482.

b. Army Regulation 15-6, Procedure for Investigating Officers and Boards of Officers, Change 1 (15 June 1981).

c. Army Regulation 638-25 (Bureau of Medicine and Surgery (Navy) Instruction 5360.22A, Air Force Regulation 143-5), Armed Services Graves Registration Office (31 July 1974).

d. Board Charter/Terms of Reference for the AFIRB, approved by the Secretary of the Army with concurrence of the Office of the Secretary of Defense on 10 June 1987.

3. Establishment of the AFIRB

The AFIRB is established by the SECDEF (reference 2d) and is located for administrative and logistical purposes within the Armed Services Graves Registration Office (ASGRO).

4. Scope of Procedures

These procedures are promulgated by the Deputy Chief of Staff for Personnel, U.S. Army, for the use and compliance of those personnel performing duties in support of AFIRB. They apply to AFIRB consideration of recommended identifications of remains returned to United States military control. They provide guidance for internal operations of the AFIRB.

5. Mission of the AFIRB

As stated in reference 2d, the mission of the AFIRB is to review recommended identifications of remains made by the U.S. Army Central Identification Laboratory, Hawaii (CILHI) [1] of United States military personnel whose deaths occurred during the Vietnam Conflict and whose remains have been recovered or repatriated from Southeast Asia, or of other recommended identifications referred to it by competent authority (e.g. a Service Secretary), and to take action to approve or disapprove the recommended identifications.

6. Organization

a. AFIRB

The AFIRB consists of one primary voting member each from the Departments of the Army, Navy and Air Force as designated by their respective Departments. Each Service Secretary, or his representative, may designate alternate voting members to serve on the AFIRB in the event that a primary member cannot be present for an AFIRB meeting. Department of the Navy may designate a Marine Corps representative as its voting member; however, Department of the Navy will be limited to one vote for each case file considered by the AFIRB. The voting members shall be of the grade of Colonel, Navy Captain, GM-15 or higher. The Army voting member is designated as the Chairman. Nonvoting members of the AFIRB include a representative of the Defense Intelligence Agency (DIA), and/or a representative of the Joint Casualty Resolution Center (JCRC) designated by each of those agencies. Persons designated as members are administratively appointed to the AFIRB by the Chief, ASGRO.

b. Consultants

"Consultants" to the AFIRB are not members of the AFIRB. They are experts in forensic sciences such as anthropology, pathology, and odontology who are either employees or contractors of the U.S. Government. "Board-certified" experts will be used as consultants unless none in the required area of expertise is available. Consultants review and evaluate recommended identifications and accompanying case files and provide their individual evaluations to the AFIRB in written reports which are included in the case files.

c. Support

The Chief, ASGRO provides the AFIRB and the consultants with all necessary administrative and logistical support.

7. Procedures

a. Recommended Identification

A recommended identification of remains will be made by the CILHI. In order to be considered by the AFIRB, the laboratory findings and recommended identification will be included in a "case file." The case file will also include recovery documentation, postmortem processing documents, photographs, antemortem medical and dental records (including photographs, and radiographs), and other relevant documentation and information from agencies such as the JCRC and the DIA. In all cases, CILHI will record in the case files any information which suggests that characteristics of the remains or other information may correlate to specific individual(s).

b. Consultant Evaluation

When a recommended identification and accompanying case file have been completed by the CILHI, the Commander, CILHI will notify the Chief, ASGRO. The Chief, ASGRO will advise the cognizant Service of the recommended identification and will promptly arrange for CILHI to present the recommended identifications and accompanying case files to the consultants. Recommended identifications will be presented to at least three forensic scientists, normally two forensic anthropologists and one forensic odontologist. Any consultant may examine the remains for which the identification is recommended if he or she deems it necessary to the evaluation. The evaluation of each consultant will be made in a written report and included in the case file. Additionally, a recommended identification and case file may be referred to other advisors, as appropriate, as discussed in paragraph 7d(2) for evaluation. When these advisors review the recommendation and case file they will submit a written report which will be included in the case file. If each consultant concurs in the CILHI recommendation and concludes that the case file is sufficient for presentation to the AFIRB, it will be forwarded to the Chief, ASGRO for referral to the Service to which the

[1] In cases in which a recommended identification has been made by a laboratory equipped and qualified to perform the functions performed by the CILHI, the term "CILHI" as used in this document should be construed to refer to that laboratory, but shall not restrict the AFIRB's authority to remand a recommended identification to the CILHI regardless of origin.

deceased belonged. Should any consultant conclude that the scientific work-up of a case file is insufficient, the Chief, ASGRO will return the case file with the consultant written evaluations to the CILHI for further study. The CILHI will be requested to address any comments or suggestions made in the consultant's written evaluation. Additional matters of the nature of those specified in paragraph 7a generated by the reassessment will be added to the case file. Upon return of the case file from the CILHI, the consultants will be given the case file for further evaluation prior to referral to the Service to which the deceased belonged. This process will include efforts to resolve any differences which may have arisen; however, where differences remain, the Service will clearly explain to the next of kin the significance of these differences of opinion to the identification process.

c. Notification of Primary Next of Kin

(1) Upon receipt of the case file, the deceased's Service will have a Service representative notify the primary next of kin (PNOK) of the recommended identification of the remains by the CILHI, the consultants' evaluations, and the approximate date when the recommended identification is to be considered by the AFIRB. The PNOK will be notified of their opportunity to:

(a) Review the recommended identification and the entire case file, except as limited by paragraph 7c(2).

(b) Have, in the case of recommended individual identification of remains, an independent professional examination of the remains conducted at PNOK expense [2]; and,

(c) Submit, within 30 days of receipt of the notification, additional written matters which will be included in the case file. Depending upon the circumstances of each case, the Service representative may extend for a reasonable time the period in which the PNOK may submit matters.

(2) The PNOK will be provided as much information in the case file as possible; however, classified or privileged information will not be released to the PNOK. The PNOK will be supplied with all unclassified information, reports and evaluations. They will also be provided an unclassified summary or extract of the classified or priviledged information in the case file.

(3) (a) If the PNOK submit no additional written matters or matters which agree with the CILHI recommendation, the Service representative will return the recommended identification and accompanying case file to the Chief, ASGRO, who will submit them to the AFIRB for review and action.

(b) If the PNOK submits additional written matters as outlined in paragraph 7c(1)(c), which disagree with the CILHI recommendation, the Service representative will return the case file to the Chief, ASGRO who will refer the recommended identification and accompanying case file to the consultants for further evaluation and written report prior to submission to the AFIRB.

d. AFIRB Review and Action

(1) Upon notification by the Service concerned that a case file is ready for presentation to the AFIRB, the Chief, ASGRO will notify AFIRB members that a recommended identification is ready for its consideration and contact DIA and JCRC to obtain relevant intelligence or incident data, and arrange for a meeting of the AFIRB. As an administrative matter, AFIRB meetings may be arranged to consider more than one recommended identification per meeting if such an arrangement will not delay for more than seven days the consideration of any recommended identification. The Chief, ASGRO will refer the recommended identification and accompanying case file to the AFIRB for review and action.

(2) Prior to taking action, the AFIRB will review the recommended identification and accompanying case file. The AFIRB may contact the CILHI, DIA, JCRC, the consultants or other advisors, as appropriate. However, prior to taking actions upon a recommended identification, the AFIRB, through the Chief, ASGRO, will have the Service representative notify the PNOK of their opportunity to examine and submit additional written matters to the AFIRB based upon any additional matters and materials added to the case file as a result of the procedures addressed in this subparagraph within 15 days of notification. These additional written matters will be included in the case file.

(3) The AFIRB will meet to take action to approve or disapprove a recommended identification. A primary or alternate voting member from the Army, Navy (Marine Corps), and Air Force must be present at a meeting for a quorum to exist. If more than one voting member from a particular Department is present at a meeting, only one may vote. Action by the AFIRB will be by a majority vote and based upon a preponderance of all relevant facts and circumstances including anthropological evidence, DIA or other intelligence reports, witness statements, JCRC evaluations and any other information relevant to loss of a service member and recovery of remains. The lack of conclusive anthropological evidence will not preclude CILHI from recommending or the AFIRB from approving a recommended identification in a case where the evidence, taken in its entirety, supports an identification. The U.S. Government has an obligation to provide to family members reasonable judgments which may be short of scientific certainty that the case being reviewed may be of a specific individual. The meetings and proceedings of the AFIRB are informal in nature and are not hearings. The Chairman, AFIRB can refer to the provisions of Chapter 4, reference 2b for nonbinding guidance on the conduct of AFIRB meetings.

8. Group Remains

In cases where individual identification of remains is not possible but the evidence is sufficient to identify the remains as belonging to a specific group of United States military personnel, CILHI may recommend to the AFIRB approval of identification of the remains as belonging to members of the group. Except as noted in paragraph 7c(1)(b), such recommended identifications will be processed in accordance with paragraph 7, above. If the AFIRB approves such a recommended identification, it may recommend to the Service Secretaries concerned, that the remains be buried in a common grave. The Service Secretaries concerned will take such actions as they deem appropriate in accordance with their responsibilities as set forth in reference 2a.

9. Forwarding of Decisions

Recommended identifications which are approved by the AFIRB will be forwarded to the Service Secretary concerned, or his representative, for appropriate action. Recommended Identifications which are disapproved by the AFIRB will be remanded to CILHI for further study. The Service Secretary concerned, or his representative, will be notified when a case file is remanded to CILHI for further study.

10. Timeliness

Not more than 30 days should normally elapse between the time that

[2] Transportation of remains to an appropriate facility for the independent expert to perform the examination will be at Government expense. The United States government will retain custody and control over the remains during such an examination.

CILHI presents its recommendation for identification to the consultants and the notification of the PNOK of the date that the AFIRB will meet to take action upon the recommended identification.

11. Reconsideration

A request by the PNOK for reconsideration of an action of the AFIRB concerning a recommended identification of remains will be granted only on the basis of newly discovered evidence not previously considered by the AFIRB. Such a request will be forwarded with the case file to the Service Secretary concerned, or his representative, for a determination. If the Service Secretary, or his representative, determines that newly discovered evidence exists and grants the request, the case file will be returned to the Chief, ASGRO whereafter the procedures in paragraphs 7b and 7d will be followed.

12. Changes to Procedures

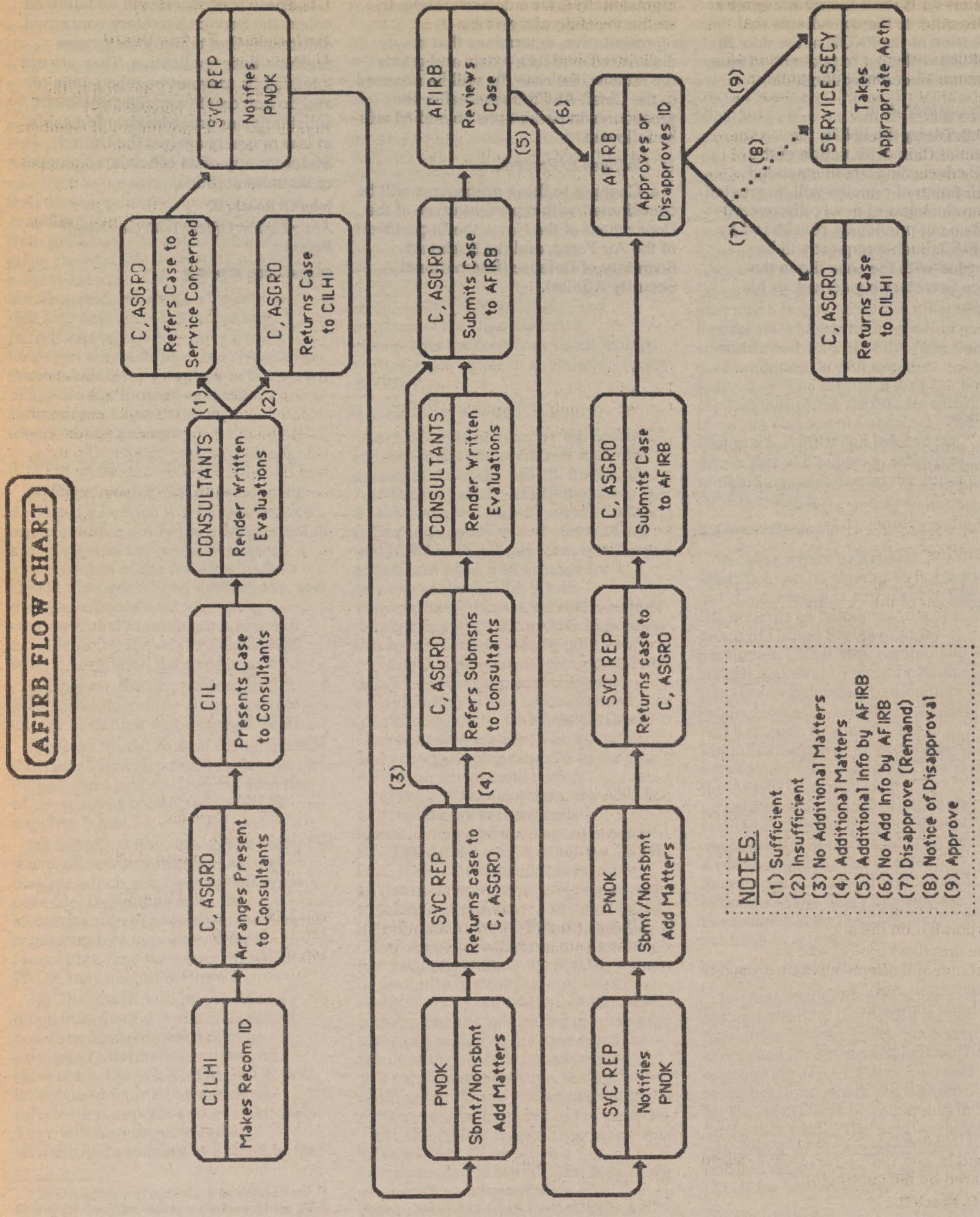
a. Changes to these procedures will be coordinated with representatives of the Department of the Navy, the Department of the Air Force, and the Assistant Secretary of Defense (International Security Affairs).

b. These procedures will be followed unless the Service Secretary concerned determines that military exigencies preclude their application. They are not intended to, may not be relied upon to, and do not, create any right or benefit, substantive or procedural, enforceable at law or equity against the United States, or any of its officials, employees or instrumentalities.

John O. Roach, II,

Army Liaison Officer With the Federal Register.

BILLING CODE 3710-08-M



APPENDIX

[FR Doc. 87-18319 Filed 8-14-87; 8:45 am]

BILLING CODE 3710-08-C

Decision To Build a Bowling Center at the Presidio of San Francisco, CA

Notice is hereby given, pursuant to paragraph 17 of the Stipulation for Dismissal With Prejudice in the case entitled Sierra Club vs. Marsh, filed with the U.S. District Court for the Northern District of California July 16, 1986, of the Army's decision to build a new Bowling Center facility at the Presidio of San Francisco. A Request for Proposal (RFP) for design and subsequent construction is scheduled to be advertised in August 1987. The design selected from the proposals to be submitted in response to the RFP will be presented at a public hearing and comments on the design will be considered prior to finalization of design. Construction is scheduled to begin during 1988.

Location

The proposed Bowling Center will be located south of the Main Parade Ground area of the Presidio, near the intersection of Moraga Avenue and Montgomery Street.

Description

The proposed project consists of the replacement of the existing Bowling Center with a new 12,200 SF, one-story structure. The existing Bowling Center is located in a temporary, wood frame building in poor repair. On the proposed site, Building 92 will be demolished prior to construction. This building is neither considered to be historically significant nor does it contribute to the historical significance of the Presidio as a National Historic Landmark or a National Historic District. The proposed Bowling Center design will be compatible with the historic resources of the Presidio. In addition to the new structure, approximately 38 parking spaces and landscaping will be incorporated on the site.

The proposed project and its environmental effects were discussed in an Environmental Assessment (EA) circulated for public and agency review in December of 1986 and was reviewed at a hearing of the Golden Gate National Recreation Area (GGNRA) Advisory Commission on January 6, 1987. A Finding of No Significant Impact has been completed. A second hearing with the GGNRA Advisory Commission will be held in late 1987 to review the design prepared by the contractor.

John O. Roach II,

Army Liaison Officer, with the Federal Register.

[FR Doc. 87-18677 Filed 8-14-87; 8:45 am]

BILLING CODE 3710-08-M

Decision To Build a Branch Exchange at the Presidio of San Francisco, CA

Notice is hereby given, pursuant to paragraph 17 of the Stipulation for Dismissal With Prejudice in the case entitled Sierra Club vs. Marsh, filed with the U.S. District Court for the Northern District of California July 16, 1986, of the Army's final decision to build a new Branch Exchange facility at the Presidio of San Francisco. The construction contract is expected to be advertised in September 1987 and awarded in October 1987. Construction is expected to begin in November 1987.

Location

The proposed Branch Exchange will be located in the northeast section of the Presidio, east of the intersection of Gorgas Avenue and Marshall Street, adjacent to the Richardson Avenue (Hwy. 101) off-ramp.

Description

The proposed project consists of the replacement of the existing Branch Exchange (3,405 square feet) with a 4,916 square foot (SF), one-story structure. The existing Branch Exchange shares a temporary wood frame building (Building 609) with the Four Seasons Store, near the corner of Old Mason Street and Bank Street. Building 609, with a total of 15,324 square feet, is scheduled to be demolished as part of the new commissary project. Prior to construction, three existing structures (Buildings 1164, 1165 and 1166) totalling 6,169 SF, will be demolished. These buildings are neither considered to be historically significant nor do they contribute to the historical significance of the Presidio as a National Historic Landmark or a National Historic District. The proposed Branch Exchange design is compatible with the historic resources of the Presidio. In addition to the new structure, 38 parking spaces, a truck loading dock, and landscaping will be developed.

The proposed project and its environmental effects were discussed in an Environmental Assessment (EA) circulated for public and agency review in February 1987 and was reviewed at a Hearing of the Golden Gate National Recreation Area (GGNRA) Advisory Commission on March 26, 1987. A Finding of No Significant Impact has been completed.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 87-18678 Filed 8-14-87; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Performance Review Board Membership

Pursuant to 5 U.S.C. 4314(c)(4), the Department of the Navy (DON) announces the appointment of members to the DON's numerous Senior Executive Service (SES) Performance Review Boards. The purpose of the Boards is to provide fair and impartial review of the Senior Executive Service performance appraisals prepared by the senior executive's immediate and second level supervisors; to make recommendations to the Secretary of the Navy regarding acceptance or modification of the performance rating, transfer, reassignment, or removal from the SES of any senior executive whose performance is considered to be unsatisfactory; and to make nominations for financial performance awards. Composition of the particular Boards will be determined on an ad hoc basis from among individuals listed below:

Nominees For Performance Review Board Membership

Mr. E. P. Angrist
Mr. O. R. Ashe
Mr. R. J. Barnett
Dr. E. A. Berman
Mr. J. J. Bettino
Mr. I. Blickstein
RADM L. E. Blose
BGEN W. E. Boomer
Mr. A. S. Bradford
Mr. J. H. Brown
Mr. R. C. Burow
Mr. E. G. Cammack
RADM W. H. Cantrell
RADM K. L. Carlsen
Mr. C. H. Clark
CAPT W. G. Clautice, USN
Dr. T. Coffey
The Honorable R. H. Conn
Mr. J. N. Costello
Mr. S. Cropsey
Mr. H. Dauber
RADM G. W. Davis, VI
Mr. A. DePrete
Mr. A. R. DiTrapani
Mr. H. L. Dixson
Mr. R. E. Doak
Mr. E. E. Eastin
RADM T. W. Evans
CAPT A. C. Esau
RADM F. L. Filipiak
RADM W. J. Finneran
RADM H. Fiske
Mr. F. B. Ford
Mr. J. E. Gaines
Mr. R. G. Garant
Mr. C. G. Geiger
Mr. J. Genovese
Mr. R. O. Goodman

Mr. C. V. Gorsey
Mr. A. B. Grimes
Mr. R. L. Haas
Mr. R. A. Hallex
Mr. P. A. Harner
Ms. M. H. Harris
Mr. R. L. Haver
Mr. T. J. Haycock
Mr. P. W. Hayes
Mr. M. L. Higgins
Mr. R. M. Hillyer
Mr. P. M. Hitch
Mr. G. C. Hoffman
RADM L. J. Holloway
RADM R. B. Horne
Mr. A. E. Johnson
Mr. T. A. Kallmeyer
Mr. J. J. Keane
Mr. G. Keightley
RADM F. G. Kelley, CEC, USN
Mr. R. B. Keller
Mr. E. T. Kinney
Mr. R. Kiss
CAPT R. W. Klementz
Mr. R. B. Levine
Dr. R. A. Lefande
Mr. W. H. Lindahl
Mr. R. E. Malatino
Mr. W. H. Manthorpe
Mr. J. W. Marsh
Mr. D. A. Matteo
Ms. C. P. Matthews
Mr. M. K. McElhaney
Mr. C. McManus
Mr. L. H. McRoskey, Jr.
Ms. D. M. Meletzke
Mr. E. L. Messere
CAPT W. Miller
RADM R. D. Milligan
Mr. J. H. Mills
RADM J. B. Mooney, Jr., USN
Mr. R. P. Moore
Dr. M. K. Moss
Mr. P. M. Murphy
Mr. H. J. Nathan
Mr. C. P. Nemfakos
RADM J. W. Nyquist
Mr. J. J. O'Connor
Ms. M. A. Olsen
Mr. P. M. Palermo
Mr. F. A. Phelps
Dr. J. H. Probus
The Honorable E. A. Pyatt
Mr. W. G. Rae
BGEN G. M. Reals
RADM R. L. Rich
Dr. B. B. Robinson
Mr. R. Rumpf
Mr. R. R. Rojas
Dr. F. E. Saalfeld
Mr. P. R. Sacilotto
Mr. W. Sansone
Mr. W. J. Schaefer
Mr. T. W. Schaeffer, Jr.
Mr. G. J. Schmitt
Mr. P. A. Schneider
Dr. P. A. Selwyn
Mr. R. L. Shaffer
Dr. J. J. Shepard
Mr. J. N. Shrader
RADM J. F. Smith, Jr., USN
RADM W. D. Smith
Ms. A. M. Stratton
Mr. F. S. Sterns
Mr. F. W. Swofford
Mr. W. A. Tarbell
Mr. J. K. Taussig, Jr.
Mr. R. O. Thomas
Mr. D. W. Tiedgen
RADM R. L. Topping
Mr. C. J. Turnquist
The Honorable C. G. Untermeyer
CAPT C. F. A. Wagner
Mr. W. L. Wagner
RADM R. M. Walsh
RADM J. C. Weaver
Mr. A. R. Weiss
Mr. H. J. Wilcox
Mr. W. Willoughby

For additional information, contact: Mr. Michael O. Duggins, Special Assistant for Executive Personnel, Office of Civilian Personnel Management, Department of the Navy, Washington, DC 20350, Telephone: (202) 696-5174.

Date: August 12, 1987.

Jane Virga,

Lieutenant, JAGC, U.S. Navy, Federal Register Liaison.

[FR Doc. 87-18744 Filed 8-14-87; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Mine Warfare Capabilities Task Force will meet September 17–18, 1987 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review current and projected U.S. and Allied Mine Warfare capabilities and potential U.S. vulnerabilities in the broad context of maritime operations and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Date: August 12, 1987.

Jane M. Virga,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 87-18745 Filed 8-14-87; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Weapon Effectiveness Task Force will meet September 18, 1987, from 9 a.m. to 5 p.m. at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review the Navy's ability to maximize weapon effectiveness through both hardware design and tactical employment, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Date: August 12, 1987.

Jane M. Virga,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 86-18746 Filed 8-14-87; 8:45 am]

BILLING CODE 3810-AE-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

August 13, 1987.

The USAF Scientific Advisory Board Minuteman III Penetration Aids Study will conduct closed meetings at the Pentagon Washington D.C. on September 1-4, and September 8-9, 1987 from 8:00 a.m. to 5:00 p.m. each day.

The purpose of these meetings is to review, discuss and evaluate the effectiveness of penetration aids being developed for the Minuteman III.

These meetings concern matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-18916 Filed 8-14-87; 12:13 pm]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangements; European Atomic Energy Community; Germany

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above-mentioned agreement involve approval of the following sales:

Contract Number S-EU-922, for the sale of 3,000 milligrams of uranium-236 to the Institute for Kernphysik, Giessen, the Federal Republic of Germany, for nuclear resonance fluorescence research. Contract Number S-EU-926, for the sale of 5,000 milligrams of uranium-234 to Kraftwerk Union AG, Karlstein, the Federal Republic of Germany, for detection of breeding in power reactors.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: August 11, 1987.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87-18680 Filed 8-14-87; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement; European Atomic Energy Community; Germany

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract Number S-EU-919, for the sale of 10 milligrams of plutonium-242, 30 milligrams of uranium-236, and 1 milligram of thorium-230, for use in radiochemical procedures by the Federal Health Office, Nuherberg, the Federal Republic of German.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangment will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 11, 1987.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87-18681 Filed 8-14-87; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement; Japan and European Atomic Energy Community

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/EU (JA)-93, for the retransfer of mixed-oxide fuel rods from Japan to Belgonucleaire, in Belgium, containing 4,300 grams of uranium enriched to 0.77 percent in the isotope uranium-235, and 480 grams of plutonium for irradiation and post-irradiation examination.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: August 11, 1987.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87-18682 Filed 8-14-87; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 87-36-NG]

Application To Import Natural Gas From Canada; Texarkoma Transportation Co.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on July 7, 1987, of an application from Texarkoma Transportation Company (Texarkoma) for blanket authorization to import, for its own account or for the account of others, Canadian natural gas for short-term and spot market sales to customers in the United States. Authorization is requested to import 40 MMcf/d of natural gas and a maximum of 14.6 Bcf annually for a two-year

period beginning on the date of the first delivery. Texarkoma is an Arkansas corporation with its principal place of business in Little Rock, Arkansas. Texarkoma states that it intends to use existing pipeline facilities for the transportation of the proposed imports. Texarkoma has requested that the authorization be granted on an expedited basis.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than September 16, 1987.

FOR FURTHER INFORMATION CONTACT:

Chuck Boehl, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-6050
Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if the ERA approves this requested blanket import, it may designate a total amount of authorized volumes for the term rather than a daily or annual limit, in order to provide the applicant with maximum flexibility of operation. ERA will also condition the authorization on the filing of quarterly reports to facilitate ERA monitoring of the operation and effectiveness of the blanket program.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., September 16, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comment, an oral presentation, a conference, or trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that is is material and relevant to a decision in the proceeding. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316. A copy of Texarkoma's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. August 10, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-18683 Filed 8-14-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER87-564-000, et al.]

Electric Rate and Corporate Regulation filings; Arizona Public Service Co., et al.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. ER87-564-000]

August 10, 1987.

Take notice that on August 4, 1987, Arizona Public Service Company (Arizona), tendered for filing the Westwing Switchyard Amended Interconnection Agreement executed August 14, 1986. The Parties to this Agreement are Arizona, the United States of America, the Department of Water & Power of the City of Los Angeles, El Paso Electric Company, Public Service Company of New Mexico, Nevada Power Company, the Salt River Project Agricultural Improvement and Power District, and Tucson Electric Power Company.

This Agreement updates and revises the allocation of costs in the existing Westwing Switchyard Interconnection Agreement to reflect current cost responsibilities among the participants resulting from the addition of a second 500 kV transmission line from the Palo Verde Nuclear Generating Station into the Westwing Switchyard.

Waiver of the Commission's Notice Requirements under 18 CFR § 35.11 is requested so this Agreement can be made effective on August 14, 1986, the date of last execution.

Copies of this filing have been sent to the Arizona Corporation Commission and to all parties executing this Agreement.

Comment date: August 24, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Gas and Electric Company

[Docket No. ER87-563-000]

August 10, 1987.

Take notice that on August 4, 1987, Pacific Gas and Electric Company (PGandE) tendered for filing proposed

changes to Rate Schedule FPC No. 53. These changes are to certain rates, terms, and conditions concerning those services rendered by PGandE under the agreement entitled "Agreement Among the Modesto Irrigation District, the Turlock Irrigation District, the City and County of San Francisco, and Pacific Gas and Electric Company" (Agreement) which has been filed as part of Rate Schedule FPC No. 53.

These changes are summarized as follows:

• Refunds to City and County of San Francisco (CCSF) for Settlement of FERC Docket No. ER84-322, 1985 Attrition Reduction in CPUC Advice Letter No. 1115-E, and for the Gas Suppliers Refund in CPUC Advice Letter No. 1061-E.

• Settlement for pre-July 1985 owning and operating costs for Helms and Diablo Canyon Power Plants.

• Temporary Rate Implementation Procedure for Diablo Canyon beginning July 1, 1985.

• Increases in Revenue Requirement as a result of certain California Public Utilities Commission and Federal Energy Regulatory Commission decisions. These increases are proposed in accordance with the provisions of the currently filed agreements.

Using 1987 billing determinants, these rate changes would result in an estimated yearly revenue increase of $3,830,042 or 11.28 percent.

Copies of this filing were served upon CCSF, the Modesto Irrigation District, the Turlock Irrigation District, and the Public Utilities Commission of the State of California.

Comment date: August 24, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Gulf Power Company

[Docket No. ER87-562-000]

August 10, 1987

Take notice that on August 3, 1987, Gulf Power Company (Gulf) tendered for filing Supplements to its FERC Electric Tariffs providing for changes in loads for service by Gulf to Choctawhatchee Electric Cooperative, Inc. and West Florida Electric Cooperative Association. These tariff supplements are proposed to be effective for service commencing on June 1, 1987, and Gulf therefore request waiver of the Commission's notice requirements to allow such effective dates.

Comment date: August 24, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. U.S. Department of Energy, Bonneville Power Administration

[Docket Nos. EF87-2011-000 and EF87-2021-000]

August 10, 1987.

Take notice that on July 31, 1987, Bonneville Power Administration (BPA), pursuant to section 7(a)(2) of the Northwest Power Act, 16 U.S.C. 839e(a)(2), tendered for filing proposed rate adjustments for its wholesale power and transmission rates. Pursuant to Commission regulation 300.21, 18 CFR 300.21, BPA seeks final confirmation of the proposed rates, effective October 1, 1987. In the alternative, BPA seeks interim approval effective October 1, 1987, pursuant to Commission regulation 300.20, 10 CFR 300.20.

BPA's wholesale power rates are proposed to be increased, while transmission rates are proposed to be described, with the exception of transmission rate schedule IS-87, which has been increased. BPA's proposed wholesale power rates are designed to increase revenues during the rate approval period by approximately $289.8 million, which represents an increase of approximately 5.2 percent. BPA's proposed transmission rates other than schedule IS-87 are designed to decrease revenues by approximately $27.2 million, or 12.9 percent. Transmission service rate schedule IS-87 is designed to increase revenues by approximately $2.7 million, or 17.4 percent. With these increases BPA's total revenues during the rate approval period will be approximately $5.887 billion.

The designations of the rate schedules which are the subject of this proposed rate adjustment are as follows: PF-87 (Priority Firm Power Rate); IP-87 (Industrial Firm Power Rate); VI-87 (Variable Industrial Power Rate); SI-87 (Special Industrial Power Rate); CF-87 (Firm Capacity Rate); CE-87 (Emergency Capacity Rate); NR-87 (New Resource Firm Power Rate); SP-87 (Long-term Surplus Firm Power Rate); NF-87 (Nonfirm Energy Rate); SS-87 (Share-the-Savings-Rate); RP-87 (Reserve Power Rate); EPT-87.1 (Formula Power Transmission); FPT-87.3 (Formula Power Transmission; IR-87 (Intergration of Resources); IS-87 (Southern Intertie Transmission); IN-87 (Northern Intertie Transmission); IE-87 (Eastern Intertie Transmission); ET-87 (Energy Transmission); MT-87 (Market Transmission); and UFT-2 (Use-of-Facilities Transmission).

The proposed rate approval period is two years, from October 1, 1987 through September 30, 1989 for all rate schedules, except for transmission rate schedules UFT-2 and FPT-87.3. BPA requests extension of current rate schedule UFT-2 for the period October 1, 1987 through June 30, 1990. The proposed approval period for schedule FPT-87.3 is for October 1, 1987 through September 30, 1990.

The proposed rate approval period for BPA's Nonfirm Energy Rate Cap, which is contained in BPA's General Rate Schedule Provisions, is twelve years, from October 1, 1987 through September 30, 1999. BPA request waiver of § 300.1(b)(6) of the Commission's regulations, which limits the proposed rate approval period to 5 years.

Comment date: August 25, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. U.S. Department of Energy Bonneville Power Administration

[Docket No. EF87-2011-001]

August 10, 1987.

Take notice that on July 31, 1987, Bonneville Power Administration (BPA), pursuant to section 7(a)(2) of the Northwest Power Act, 16 U.S.C. 839e(a)(2) and Commission regulation § 300.21, 18 CFR 300.21, tendered for filing proposed rate schedule SL-87, Long Term Surplus Firm Power Rate. SL-87 is available for the long-term purchase of surplus firm powre and firm displacement power, and supersedes rate schedule FD-85.

SL-87 is proposed to become effective on October 1, 1987 for a period as long as BPA has surplus firm power available for sale. BPA requests waiver of the Commission's 180-day advance filing requirement contained in 18 CFR 300.10(a)(3)(ii) so that the SL-87 rate erceives final approval by October 1, 1987. In the alternative, BPA requests interim approval by October 1, 1987, pursuant to § 300.20 of the Commission's regulations, 18 CFR 300.20.

Comment date: August 25, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. West Texas Utilities Company

[Docket No. DR87-565-000]

August 11, 1987.

Take notice that on August 4, 1987, West Taxes Utilities Company (WTU) tendered for filing (1) a letter agreement, dated April 28, 1987, between WTU and the Texas Municipal Power Agency (TMPA) and (2) a letter agreement, dated May 18, 1987, between WTU and TU Electric Company (TU). The TMPA Agreement provided for WTU to furnish transmission service to TMPA, during the period July 1, 1986 to December 31, 1986, for 60,000 kilowatts of power and associated energy purchased by Texas-

New Mexico Power Company from the City of Bryan, Texas, a TMPA member. The TU, Agreement provided for WTU to furnish transmission service to TU, during the period June 1, 1985 to December 31, 1986, for various amounts of power and associated energy purchased by TU for various periods of time from three cogenerators in the state of Texas. WTU also tendered Notices of Cancellation with respect to both the TMPA Agreement and the TU Agreement.

WTU requests and effective date of July 1, 1986 for the TMPA Agreement and an effective date of June 1, 1985 for the TU Agreement. WTU requests an effective date of December 31, 1986 for each of the two Notices of Cancellation. Accordingly, WTU requests waiver of the Commission's notice requirements.

Copies of this filing have been sent to the Public Utilities Commission of Texas, the Texas Municipal Power Agency and TU Electric Company.

Comment date: August 24, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18750 Filed 8-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER87-567-000, et al.]

Electric Rate and Corporate Regulation Filings; Montaup Electric Co., et al.

August 12, 1987.

Take notice that the following filings have been made with the Commission:

1. Montaup Electric Company

[Docket No. ER87-567-000]

Take notice that on August 3, 1987 Montaup Electric Company (Montaup) tendered for filing rate schedule revisions incorporating a revised M-11 rate for all-requirements service to Montaup's affiliates Eastern Edison Company (Eastern Edison) in Massachusetts and Blackstone Valley Electric Company (Blackstone) in Rhode Island and contract demand service to three nonaffiliated customers: The Town of Middleborough in Massachusetts and the Pascoag Fire District and the Newport Electric Corporation in Rhode Island. The rate schedule revisions provide for a decrease in the demand charge from $12.70165/kW-Mo. to $11.7820/kW-Mo., or a 7.2% decrease. Montaup requests that these rates become effective July 1, 1987.

The base rate decrease is requested to provide for the reduction in the cost of service resulting from the change in the federal corporate income tax rate that became effective July 1, 1987.

Montaup's filing was served on the affected customers, the Rhode Island Public Utilities Commission and the Massachusetts Department of Public Utilities.

Comment date: August 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Connecticut Light and Power Company

[Docket No. ER87-569-000]

Take notice that on August 7, 1987, Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to a Transmission Agreement dated June 1, 1986 between (1) CL&P and Western Massachusetts Electric Company (WMECO and together with CL&P, the NU Companies) and (2) Vermont Public Power Supply Authority (VPPSA).

CL&P states that the Transmission Agreement provides for weekly transmission services on an as needed and as available basis to VPPSA for the wheeling of their purchase from the Connecticut Municipal Electric Energy Cooperative (CMEEC) of electric capacity and associated energy from CMEEC's system or for the wheeling of capacity in exchange units from CMEEC during the period from June 1, 1986 to May 31, 1988.

The transmission charge rate is a weekly rate equal to one-fifty-second of the annual average cost of transmission service on the electric transmission system of the NU Companies determined in accordance with Appendix A and Exhibits I, II and III thereto, of the Transmission Agreement. The weekly transmission charge is determined by the product of (i) the transmission charge rate ($/kW-week), and (ii) the number of kilowatts VPPSA is entitled to receive during such week. The weekly transmission charge is reduced by up to 50% to give due recognition for payments made by VPPSA to other systems also providing transmission service.

CL&P requests that the Commission waive its standard notice period and permit the Transmission Agreement to become effective as of June 1, 1986.

WMECO has filed a certificate of concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed to VPPSA, Williston, Vermont.

CL&P further states that the filing is in accordance with section 35 of the Commission's Regulations.

Comment date: August 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Minnesota Power & Light Company

[Docket No. ER87-476-000]

Take notice that on August 7, 1987, Minnesota Power & Light Company (Minnesota Power) tendered for filing a response to a letter from the FERC Staff requesting information concerning rates for wholesale electric service pursuant to executed contract supplements with the following municipal customers:

a. City of Aitkin, Minnesota
b. City of Grand Rapids, Minnesota
c. City of Keewatin, Minnesota
d. City of Pierz, Minnesota
e. City of Randall, Minnesota
f. City of Two Harbors, Minnesota
g. City of Mountain Iron, Minnesota

Minnesota Power states that under the terms and conditions of the executed contract supplements, the terms and conditions of such contracts are extended beyond their present expirations dates of December 31, 1989 or later, and that there are limitations on rate increases during the remaining time of such contracts, but that the executed contract supplements do not affect the presently effective rates for service under such contracts. Minnesota Power states that it will use procedures adopted in Order No. 475 to modify its wholesale rates for service to all customers, including those with executed contract supplements, to reflect changes in the Federal corporate income tax rate adopted in the Tax Reform Act of 1986. Minnesota Power further states that it will analyze the impact on its wholesale rates of the proposed sale of a portion of its Clay Boswell Unit No. 4, and file with the

FERC any modifications which are shown to be appropriate.

Comment date: August 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Electric and Gas Company

[Docket No. ER87-555-000]

Take notice that on August 7, 1987, Public Service Electric and Gas Company (PSE&G) tendered for filing the following initial Rate Schedule: Transmission Service and Interconnection Agreement between Public Service Electric and Gas Company and EF Union, Inc. The Rate Schedule provides for a monthly charge of $1.63 per kilowatt plus $.00048 per kilowatthour for the provision by PSE&G of transmission service to deliver the net electric power output of EF Union, Inc.'s qualifying cogeneration facility to be located in the City of Union, New Jersey to Jersey Central Power and Light Company.

PSE&G requests, with the customes's consent, a waiver of the Notice Requirements of § 35.3(a) of the Commission's Regulations so that the Rate Schedule can be submitted for filing at this time and PSE&G further requests that the filing be made effective within sixty (60) days of the date of this filing.

PSE&G states that a copy of this filing has been served by mail upon customer and the New Jersey Board of Public Utilities.

Comment date: August 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18751 Filed 8-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9904-001]

Surrender of Preliminary Permit; Savage Rapids Hydroelectric Co.

August 11, 1987.

Take notice that Savage Rapids Hydroelectric Company, permittee for the proposed Savage Rapids Project, has requested that its preliminary permit be terminated. The permit was issued on June 16, 1986, and would have expired on May 31, 1989. The project would have been located on the Rogue River near the town of Grants Pass, in Josephine County, Oregon. The permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed the request on July 27, 1987, and the preliminary permit for Project No. 9904 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18756 Filed 8-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-566-000]

Application for Commission Certification of Qualifying Status of a Cogeneration Facility; E.F. Oxnard, Inc.

August 12, 1987.

On July 31, 1987, E.F. Oxnard, Inc. (Applicant), of 401 B Street, Suite 1000, San Diego, California 92101, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Oxnard, California. The facility will consist of a combustion turbine generator, a dual pressure heat recovery steam generator, and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be used via absorption chillers for refrigeration and food blanching. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 48.1 MW. Installation of the facility is expected to begin in June 1989.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18755 Filed 8-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-728-000]

Application for Permanent Abandonment and Limited-Term Pregranted Abandonment for Sales Under Small Producer Certificate; Amax Petroleum Corp.

August 10, 1987.

Take notice that on June 29, 1987, as supplemented on August 3, 1987, Amax Petroleum Corporation (Amax) filed an application in Docket No. CI87-728-000, pursuant to section 7 of the Natural Gas Act and § 2.77 of the Commission's rules requesting permanent abandonment of sales of gas to United Gas Pipe Line Company (United) under six contracts [1] covering acreage in High Island Block Nos. 339, 340, 356, 520, 545, 546, 547, and 548, Offshore Louisiana, Oaks Field, Claiborne Parish, Louisiana and Martinville Field, Simpson County, Mississippi. The application also requests that for sales of the released gas to other purchasers, Amax receive pregranted abandonment authorization for a three-year period under its small producer certificate in Docket No. CS72-419.

In support of his application, Amax states that due to reduced market demand during the past several years United substantially decreased its takes of gas attributable to Amax's interest under the contracts. In order to eliminate both United's present and

[1] The contracts are dated: October 20, 1977, May 19, 1980, August 17, 1977, November 17, 1982, October 6, 1980 and July 7, 1982.

further liability for take-or-pay payments, Amax and United negotiated a settlement agreement executed June 1, 1987. The settlement provides that in exchange for certain cash and other consideration, Amax waive all of its payment claims against United under the contracts and Amax and United terminate all six contracts between the parties. Amax also requests permanent abandonment with respect to certain properties subject to its Oaks Field Contract, dated October 6, 1980, which were transferred in 1985, to Endurance Oil & Gas, Inc., Philwell, Inc. and KWB Oil Property Management, Inc.

Amax requests that its application be considered on an expedited basis under procedures established by Order No. 436, Docket No. RM85-1-000, at 18 CFR 2.77.[2] Deliverability is approximately 6,776 Mcf/d. The gas is NGPA section 104 Post 1974 gas (75%), 102(d) (25%) and de minimus amounts of section 104 flowing gas.

Since Amax has requested that its application be considered on an expedited basis, all as more fully described in the application which is on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Amex to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18758 Filed 8-14-87; 8:45 am]

BILLING CODE 6717-01-M

[2] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment.

Application; Panhandle Eastern Pipe Line Co.

[Docket Nos. CI87-127-001 and CI87-128-001]

August 12, 1987.

Take notice that on August 5, 1987 Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77001, filed on behalf of its producer-suppliers in Docket Nos. CI87-127-001 and CI87-128-001 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act and the regulations thereunder for amendment of the certificate of public convenience and necessity which previously authorized temporary abandonment of sales and issuance of a limited-term certificate, all as more fully set forth in the application which is on file with the Federal Energy Regulatory Commission (Commission) and open for pubic inspection.

Specifically, by this application Panhandle requests Commission authorization to extend the effective date of the authorization previously granted in this docket to December 31, 1988.

Protests and petitions to intervene may be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Rules of Practice and Procedure, 18 CFR 385.211 or 385.214 and the Regulations under the Natural Gas Act, 18 CFR 157.10 on or before August 27, 1987. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules. Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the amended certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Panhandle to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18757 Filed 8-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-478-000 et al.]

Natural Gas Certificate Filings; Gas Gathering Corp. et al.

Take notice that the following filings have been made with the Commission:

1. Gas Gathering Corporation

[Docket No. CP87-478-000]

August 10, 1987.

Take notice that on August 4, 1987, Gas Gathering Corporation (Gas Gathering), P.O. Box 519, Hammond, Indiana 70404, filed in Docket No. CP87-478-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to transport under the authorization issued in Docket No. CP86-129-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Gas Gathering states that pursuant to a transportation agreement dated October 15, 1986, it proposes to transport natural gas on behalf of Cities Service Oil and Gas Corporation (Cities) through its system between Iberville and Pointe Coupee Parishes in Louisiana. Gas Gathering estimates that peak day volumes under this agreement would not exceed 600 MMBtu's per day and that total volumes to be transported would be 22,500 MMBtu's. Gas Gathering states that the proposed transportation service commenced October 14, 1986, pursuant to the 120-day self implementing provisions of § 284.223(a)(1) of the Regulations and terminated within the 120 day period. Gas Gathering now proposes to restart the service following receipt of prior notice authorization. Gas Gathering notes that although the underlying transportation agreement has an initial term which expired November 30, 1986, Gas Gathering and Cities have exercised the option to continue the agreement in force on a month to month basis.

Comment date: September 24, 1987, in accordance with Standard Paragraph G at the end of this notice.

2. Southern Natural Gas Company

[Docket No. CP87-454-000]

August 10, 1987.

Take notice that on July 21, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP87-454-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing Southern to transport gas on behalf of the City of Wrens, Georgia (Wrens), the City of Thomson Natural Gas System (Thomson), and Atlanta Gas Light Company (Atlanta), (each of which hereinafter may be referred to as "shipper") all acting as agents in arranging for the transportation of natural gas supplies for J. M. Huber (Huber) for use in its plants in Wrens and Macon, Georgia, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport natural gas for Huber in accordance with the terms and conditions of transportation agreements between Wrens and Southern dated June 3, 1987; between Thomson and Southern dated June 22, 1987, and between Atlanta and Southern dated June 29, 1987. Southern states it has agreed to transport on an interruptible basis up to 5,080 MMBtu equivalent of gas per day on behalf of Wrens, up to 5,080 MMBtu equivalent of gas per day for Thomson, up to 7,600 MMBtu for Atlanta. Southern requests that the Commission issue a limited-term certificate for a term expiring on October 31, 1988.

Southern states that the transportation agreements provide for Wrens, Thomson and Atlanta to cause natural gas to be delivered to Southern for transportation at various existing points on Southern's contiguous pipeline system in the Main Pass and Mississippi Canyon Areas, offshore Louisiana; Terrebonne Parish, Louisiana; Simpson County, Mississippi; and Pickens County, Alabama. Southern states that it would redeliver to Wrens at the City of Wrens Meter Station located in Jefferson County, Georgia; to Thomson at the city of Thomson Meter Station in Jefferson County, Georgia; and to Atlanta at the Macon Area Delivery Point, as set forth in Exhibit A to the Service Agreement between Southern and Atlanta dated September 23, 1969, an equivalent quantity of gas less 3.25 percent of such amount which shall be deemed to be used as compressor fuel and company-use gas (including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less each shippers' pro-rata share of any gas delivered for the shippers' account which is lost or vented for any reason. It is further stated that pursuant to agreements with Atlanta, Thomson and Wrens dated March 5, 1987, March 16, 1987, and March 16, 1987, Huber has arranged for Wrens and Thomson to transport through their facilities the gas purchased by Huber for use in its plant in Wrens, Georgia, and for Atlanta to transport through its facilities gas which Huber would use in its plant in Macon, Georgia. Southern states that it has been advised that Huber has entered into gas sales contracts to purchase the natural gas from Southland Pipeline Company and SNG Trading Inc.

Southern states that Wrens, Thomson, and Atlanta have agreed to pay Southern each month, the following transportation rates:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to shipper under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to shipper do not exceed the daily contract demand of shipper, the transportation rate shall be 48.2 cents per MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to shipper under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to shipper exceed the daily contract demand of shipper, the transportation rate for the excess volumes shall be 77.6 cents per MMBtu.

Southern states that the transportation arrangement would enable Humber to diversify its natural gas supply sources and to obtain gas at competitive prices. Additionally, Southern advises that it would obtain take-or-pay relief on the gas Huber may obtain from its suppliers.

Comment date: August 31, 1987, in accordance with Standard Paragraph F at the end of this notice.

3. Ozark Gas Transmission System

[Docket No. CP87-238-000]

August 10, 1987.

Take notice that on March 10, 1987, as supplemented on May 26, 1987, June 8, 1987, July 9, 1987, July 23, 1987 and July 30, 1987, Ozark Gas Transmission System (Ozark), First City Center, 1700 Pacific Avenue Dallas, Texas 75201 filed in Docket No. CP87-238-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Ozark to transport up to 254,000 Mcf of natural gas per day on an interruptible basis for seven shippers (see Appendix), all as more fully set forth in the application on file with the Commission and open to public inspection.

Ozark requests authority to transport gas on behalf of each shipper from existing points on its system and also requests authority to receive gas from new points as may be designated by shippers and agreed to by Ozark. Ozark states that it would redeliver such gas to or for the account of each shipper, except Arkansas Oklahoma Gas Corporation (AOG), to Tennessee Gas Pipeline Company and Natural Gas Pipeline Company of America in White County, Arkansas. For AOG, Ozark would redeliver gas at existing taps in LeFlore County, Oklahoma and at an existing interconnnection on its Stephens/McBride lateral. For Sabine-DeSoto Pipeline Company, Inc., Ozark requests authorization to install taps and redeliver gas at the towns of Clarksville, Ft. Smith, Morrilton, Ozark, Searcy and Russellville, Arkansas. The cost of all facilities installed by Ozark would be reimbursed by the shipper.

Ozark states that it would charge a rate of 17.5 cents per Mcf of gas received which is Ozark's current commodity rate, subject to refund in Docket No. RP84-53.

Ozark states that the proposed term of transportation for each shipper is fifteen years.

Comment date: August 31, 1987, in accordance with Standard Paragraph F at the end of this notice.

Shipper	Transportation quality (Mcf/d)	Downstream transporters	End use
1. Arco Oil & Gas Company	10,000	NGPL [1]	System Supply of LDCs.
2. Arkansas Oklahoma Gas Corporation	4,000	None	System Supply of Shipper.
3. Colony Pipeline Corporation	50,000	NGPL [1]; Tennessee [3]	System Supply of LDCs; End Users.
4. Delhi Gas Pipeline Corporation	50,000	NGPL [1]; Tennessee [3]; Tetco [4]; Columbia 5.	System Supply of LDCs; End Users.
5. Sabine-DeSoto Pipeline Co., Inc	40,000	None	End Use customers of Shipper
6. Tennegasco Corporation	50,000	NGPL [1] Tennessee [3]	System Supply of LDCs; End Users.
7. TXO Production Corporation	50,000	NGPL [1]; Tennessee [3]; Col. Gulf [6].	System Supply of LDCs; End Users.

[1] Natural Gas Pipeline Company of America would transport pursuant to NGPA § 311 and/or Order No. 436.
[2] LDC=Local Distribution Company
[3] Tennessee Gas Pipeline Company would transport pursuant to NGPA § 311 and/or Order No. 436.
[4] Texas Eastern Transmission Company would transport pursuant to NGPA § 311.
[5] Columbia Gas Transmission Corporation would transport pursuant to NGPA §311.
[6] Columbia Gulf Transmission Company would transport pursuant to Order No. 436.

4. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP87-458-000]

August 10, 1987.

Take notice that on July 23, 1987, Arkla Energy Resources, a division of Arkla, Inc. (Applicant), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP87-458-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the continued operation and provision of certain existing facilities and services and for determinations of the jurisdictional status of other services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that increased internal scrutiny of its operations resulting from managerial and structural changes in the units and division of Arkla, Inc. and an increase in Applicant's activities subject to the Commission's jurisdiction, has revealed that at times in the past incomplete attention may have been given to certain regulatory requirements of this Commission. As a result of the increased internal scrutiny, Applicant has determined that certain of its existing facilities and services may lack necessary and appropriate certificate authority. Applicant asserts that these apparent changes in the operation of its system, in the nature of certain transactions, and in its understanding of the Commission's jurisdiction over gathering-related facilities and services and over gathering area exchanges. Applicant specifically requests jurisdictional authority covering two exchanges involving reserved gas, two other exchanges, various facilities and other services in the northwest Arkansas area of its system, and certain other facilities and services at various locations throughout its system.

Applicant seeks whatever additional certificate authority may be required for the continued use and performance of all such facilities and services. Applicant asserts that its current arrangement has instituted stringent procedures to assure that in the future such regulatory oversights do not occur and that appropriate authorizations are obtained in a timely manner. Applicant states that its Regulatory Department is now an integral part of its Operations Group. Applicant further states that its participation, review and clearance is required for all activities undertaken by its Operations Group, e.g., planning, engineering, construction, gas control and dispatching, which could have regulatory ramifications. It is further asserted that activities in other groups within the Applicant's operation which could have regulatory implications, e.g., accounting classification of new facilities, also must receive clearance from Applicant's Regulatory Department prior to their implementation. It is further stated that Applicant's procedures now assure that the installation of any new facilities and the initiation of new services would receive prior approval by Applicant's Regulatory Department and that in the future the Applicant would comply fully and in a timely manner with the requirements of this and other agencies.

Comment date: August 31, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. Shell Gas Pipeline Company

[Docket No. CP87-459-000]

August 10, 1987.

Take notice that on July 24, 1987, as supplemented on August 3, 1987, Shell Gas Pipeline Company (SGPC), P.O. Box 2463, Houston, Texas 77252-2463, filed in Docket No. CP87-459-000 a petition for an order declaring certain pipeline facilities proposed to be constructed and operated in federal waters on the Outer Continental Shelf (OCS) exempt under section 1(b) of the Natural Gas Act (NGA), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

SGPC states that natural gas has been found by its affiliate, Shell Offshore Inc. (SOI), in federal OCS waters, Green Canyon (GC) Block 19, offshore Louisiana. It is stated that SOI is the operator of GC19 and also owns 100 percent of the working interest in the block. SGPC proposes to construct 27 miles of 16-inch pipeline from SOI's Boxer production platform in GC19 to a subsea tie-in to Tennessee Gas Pipeline Company's (Tennessee) 16-inch diameter pipeline in Eugene Island (EI) Block 367, referred to as the Boxer line.

It is stated that SOI currently plans to sell all gas produced from GC19 to Shell Gas Trading Company, a wholly-owned subsidiary of Shell Oil Company, at the platform. It is also stated that SOI plans to reserve processing rights for the gas, which would be processed after it is transported onshore at the Yscloskey processing plant in St. Bernard Parish, Louisiana.

SGPC states that some of the gas producing wells on the Boxer platform are true gas wells while others are oil wells capable of producing varying quantities of casinghead gas, therefore, SOI plans to install compressors on the Boxer platform for the purpose of raising the pressure of naturally low pressure casinghead gas to the level of the higher pressure gas well gas. It is stated that the combined stream of casinghead gas and gas well gas would then undergo

simple mechanical dehydration before the commingled gas flows into the Boxer line at the natural prevailing wellhead pressure of the gas well gas. It is further stated that the Maximum inlet pressure at GC19 would be 1350 psig which is required in order to deliver gas at Tennessee's interconnection at the pressure of 1200 psig, the prevailing pressure in Tennessee's 16-inch jurisdictional line. It is stated that the pressure rating of the proposed Boxer line is 1440 psig.

SGPC asserts that because SOI plans to reserve processing rights and to retain title to all entrained natural gas liquids and liquefiables the production process would not be complete until the gas is finally processed to pipeline transmission quality at the Yscloskey processing plant onshore in St. Bernard Parish, Louisiana.

SGPC has stated that the estimated cost of the proposed facilities is $12,500,000. It is stated that Shell Energy Resources Inc., a holding company owned by Shell Oil Company, would make a capital contribution to SGPC in order to finance the proposed project.

Comment date: August 31, 1987, in accordance with Standard Paragraph F at the end of this notice.

6. Great Lakes Gas Transmission Company

[Docket No. CP87-474-000]

August 11, 1987.

Take notice that on July 31, 1987, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP87-474-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for the account of Ford Motor Company (Ford), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes states that Ford has requested that Great Lakes transport up to 110,000 Mcf of natural gas per day, on an interruptible basis, which Ford or Ford's wholly-owned subsidiary, Rouge Steel Company (Rouge) would purchase from SEMCO Energy Services, Inc. (SEMCO), a wholly owned subsidiary of Southeastern Michigan Gas Enterprises, Inc., which also owns Southeastern Michigan Gas Company (Southeastern Michigan), a local distribution company in the State of Michigan. It is further stated that Great Lakes would transport the natural gas from a point on the International Border between the United States and Canada, at Emerson, Manitoba, where the facilities of Great Lakes interconnect with the facilities of TransCanada Pipe Lines Limited, to points where Great Lakes' facilities interconnect with those of (1) ANR Pipeline Company (ANR Pipeline) at Muttonville, Michigan; (2) ANR Pipeline at Farwell, Michigan; and (3) Michigan Consolidated Gas Company (MichCon) at Belle River Mills, Michigan. Great Lakes indicates that the term of the proposed arrangements would end three years after the date of all regulatory approvals. It is further indicated that Ford and Great Lakes have entered into a transportation service agreement (Agreement) dated June 10, 1987, which would implement these arrangements.

Great Lakes states that the Agreement provides for a rate for the transportation service which is equal to the 100 percent load factor rate applicable to deliveries in the Eastern Zone under Great Lakes' existing Rate Schedule T-4 of Great Lakes FERC Gas Tariff, Original Volume No. 2. It is further stated that no new facilities would be required to provide the proposed service.

Great Lakes states that Ford has entered into transportation arrangements for the benefit of both itself and Rouge, with ANR Pipeline, MichCon, Southeastern Michigan, Michigan Gas Utilities and Consumers Power Company, for subsequent transportation to various points of interconnection between the facilities of Ford and Rouge with these companies, all located in the State of Michigan.

Great Lakes indicates that the volumes of natural gas to be transported for the account of Ford would be imported by SEMCO pursuant to import authorization being sought by SEMCO from the Economic Regulatory Administration. It is further indicated that the transportation of these volumes by ANR Pipeline would be expected to be performed under authorization of Part 284 of the Commission's Regulations. Great Lakes states that no other authorizations would be required to implement the transportation arrangements.

Comment date: September 1, 1987, in accordance with Standard Paragraph F at the end of this notice.

7. United Gas Pipe Line Company

[Docket No. CP87-471-000]

August 11, 1987.

Take notice that on July 31, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-471-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a direct industrial sale service to Air Products and Chemicals, Inc. (Air Products), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that it has notified Air Products by letters dated January 30, 1987, that its present firm service contract would terminate on February 1, 1987. United further states that continuation of this service is not in the public interest and it requests that the Commission permit the termination of direct sale service to the extent required.

United is not requesting abandonment authority of any facilities. United states that the subject delivery facilities would be left in place to accommodate either future transportation service or new sales service if appropriate contractual arrangements can be made. United states that if such new arrangements are not made, it will file to abandon such facilities.

Comment date: September 1, 1987, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commisison's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if

the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18752 Filed 8-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-486-000 et al.]

Natural Gas Certificate Filings; Gas Gathering Corp. et al.

August 12, 1987.

Take notice that the following filings have been made with the Commission:

1. Gas Gathering Corporation

[Docket No. CP87-486-000]

Take notice that on August 7, 1987, Gas Gathering Corporation (Gas Gathering), P.O. Box 519, Hammond, Louisiana 70404, filed in Docket No. CP87-486-000 a request pursuant to §§ 157.205 and 284.223 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas on behalf of Hadson Gulf, Inc. (Hadson), under the certificate issued in Docket No. CP86-129-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Gas Gathering proposes to transport up to 10,000 MMBtu of natural gas per day and up to 2,920,000 MMBtu of natural gas per year on behalf of Hadson. Gas Gathering states it would receive the natural gas at an existing measurement station owned and operated by Gas Gathering in St. Martin Parish, Louisiana. Gas Gathering further states it would redeliver the natural gas to Transcontinental Gas Pipe Line Corporation (Transco) at the inlet of an existing measurement station owned and operated by Transco in Pointe Coupee Parish, Louisiana.

Gas Gathering states that on May 1, 1987, it commenced transporting the natural gas on behalf of Hadson to Transco, on an interruptible basis, pursuant to § 284.223 (18 CFR 284.223). Gas Gathering further states that the transportation would be performed under its FERC Rate Schedule IT-1 at the currently effective rate of 10.1 cents per MMBtu. Gas Gathering indicates that no new facilities would be required in order to initiate the transportation service for Hadson.

Comment date: September 28, 1987, in accordance with Standard Paragraph G at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP87-482-000]

Take notice that on August 5, 1987, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP87-482-000 a request pursuant to § 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon service to four direct industrial customers and related tap and metering facilities, under the certificate issued in Docket No. CP83-83-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Panhandle proposes to abandon service previously provided to: (1) Mantle Mining Company, formerly C-E Refractories and Walsh Refractories (Mantle); (2) Columbia Brick and Tile Company, formerly Edwards Conley Brick and Tile Company (Columbia); (3) Colonial Brick Company, formerly Clay City Pipe Line (Colonial); and (4) Phillips 66 Natural Gas Company (Phillips). Panhandle states that it has received letters from Mantle, Columbia and Phillips consenting to the proposed abandonment of service. It is further stated that Panhandle has not obtained a letter of consent from Colonial. However, Colonial's Brick Plant is no longer in existence and no gas has been delivered to Colonial since its industrial gas contract expired April 30, 1979, it is asserted. Panhandle also proposes to remove associated taps and metering facilities located in Audrain, Boone, Vermilion and Johnson Counties, Missouri.

Comment date: September 28, 1987, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice of the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18753 Filed 8-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-15-031]

Proposed Changes in FERC Tariff; Columbia Gas Transmission Corporation

August 12, 1987.

Take notice that Columbia Gas Transmission Corporation (Columbia), on August 7, 1987, tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1, identified on Appendix A to this notice, and moves the Commission to accept such changes subject to and pending the Commission's order concerning the requests for rehearing filed with respect to the Commission's June 18, 1987 order issued in these proceedings. The tariff sheets listed on Appendix A bear an issue date of August 5, 1987 and a proposed effective date of April 1, 1987, and contain the penalty provisions for the firm (FTS-1 and 2) and interruptible (ITS-1 and 2) transportation rate schedules of Columbia revised to conform to the Commission's June 18 order.

Columbia states that the revised tariff sheets listed in Appendix A contain all of the revisions to section 6 of the transportation rate schedules required by the June 18 order. Columbia will file revised tariff sheets to reflect the other changes required by the June 18 order and the order on rehearing, in accordance with Ordering Paragraph (F) of the June 18 order.

Columbia's request, basically, is to make the tariff sheets listed on Appendix A effective for the period April 1, 1987 through the date on which the Commission accepts and makes effective revised tariff sheets filed after the order on rehearing of the June 18 order is issued, without prejudice to the pending requests for rehearing and clarification of the Commission's rulings concerning the penalty provisions. Columbia needs to have the provisions of section 6 of the transportation tariffs in place now so that it may approach some semblance of balance on its system and avoid the operational problems associated with transportation imbalances prior to the onset of winter. The revised tariff sheets should be accepted for filing as an interim solution to Columbia's problems pending the Commission's final decision.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 18, 1987.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix A

Original Volume No. 1

Second Revised Sheet No. 22D
Second Revised Sheet No. 22E
Original Sheet No. 22E1
Original Sheet No. 22E2
Original Sheet No. 22E3
Second Revised Sheet No. 22F
Second Revised Sheet No. 22O
Second Revised Sheet No. 22P
Original Sheet No. 22P1
Original Sheet No. 22P2
Original Sheet No. 22P3
Second Revised Sheet No. 22Q

[FR Doc. 87-18747 Filed 8-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-14-031]

Proposed Changes in FERC Tariff; Columbia Gulf Transmission Company

August 12, 1987.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf), on August 7, 1987, tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1, identified on Appendix A to this notice, and moves the Commission to accept such changes subject to and pending the Commission's order concerning the requests for rehearing filed with respect to the Commission's June 18, 1987 order issued in these proceedings. The tariff sheets listed on Appendix A bear an issue date of August 5, 1987 and a proposed effective date of April 1, 1987, and contain the penalty provisions for the firm (FTS-1 and 2) and interruptible (ITS-1 and 2) transportation rate schedules of Columbia Gulf revised to conform to the Commission's June 18 order.

Columbia Gulf states that the revised tariff sheets listed in Appendix A contain all of the revisions to section 6 of the transportation rate schedules required by the June 18 order. Columbia Gulf will file revised tariff sheets to reflect the other changes required by the June 18 order and the order on rehearing, in accordance with Ordering Paragraph (F) of the June 18 order.

Columbia's Gulf request, basically, is to make the tariff sheets listed on Appendix A effective for the period April 1, 1987 through the date on which the Commission accepts and makes effective revised tariff sheets filed after the order on rehearing of the June 18 order is issued, without prejudice to the pending requests for rehearing and clarifications of the Commission's rulings concerning the penalty provisions. Columbia Gulf needs to have the provisions of section 6 of the transportation tariffs in place now so that it may approach some semblance of balance on its system and avoid the operational problems associated with transportation imbalances prior to the onset of winter. The revised tariff sheets should be accepted for filing as an interim solution to Columbia Gulf's problems pending the Commission's final decision.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 18, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix A—Columbia Gulf Transmission Company List of Proposed Tariff Sheets to be Effective April 1, 1987

FERC Gas Tariff, Original Volume No. 1

Second Revised Sheet No. 161
Second Revised Sheet No. 162
Original Sheet No. 162A
Original Sheet No. 162B
Original Sheet No. 162C
Original Sheet No. 162D
Original Sheet No. 162E
Second Revised Sheet No. 163
Second Revised Sheet No. 200
Second Revised Sheet No. 201
Original Sheet No. 201A
Original Sheet No. 201B
Original Sheet No. 201C
Original Sheet No. 201D
Second Revised Sheet No. 202
Second Revised Sheet No. 237
Second Revised Sheet No. 238
Original Sheet No. 238A
Original Sheet No. 238B
Original Sheet No. 238C
Original Sheet No. 238D
Original Sheet No. 238E
Second Revised Sheet No. 239
Second Revised Sheet No. 285
Second Revised Sheet No. 286
Original Sheet No. 286A
Original Sheet No. 286B
Original Sheet No. 286C
Original Sheet No. 286D
Original Sheet No. 286E
Second Revised Sheet No. 287

[FR Doc. 87-18748 Filed 8-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP78-86-003]

Proposed Changes in FERC Gas Tariff; Trunkline Gas Co.

August 11, 1987.

Take notice that on July 31, 1987, Trunkline Gas Company (Trunkline) tendered for filing Eleventh Revised Sheet No. 21-C.8 to its FERC Gas Tariff, Original Volume No. 1.

Trunkline states that on February 8, 1980, the Commission approved a Stipulation and Agreement (Agreement) in the proceedings entitled *Kaskaskia Gas Company, et al.* v. *Trunkline Gas Company*, in the subject docket. Trunkline further states that under the terms of the Agreement, certain Small Customers as defined in Article II of the Agreement, are permitted to add new Priority 1 requirements up to 10 percent of their original annual base period volumes during the first twelve-month period and up to 8 percent of their original annual base period volumes in each succeeding twelve-month period

that the Agreement is in effect. Further, it states Article V of the agreement requires the Small Customers to report to Trunkline changes in their estimated monthly and annual volumes, which changes are to be reflected as adjustments to the monthly base period volumes for each Small Customer. Trunkline states that Eleventh Revised Sheet No. 21–C.8 reflects these adjustments in the monthly base period for each Customer. Trunkline proposes an effective date of September 1, 1987.

Trunkline states that copies of this filing have been served on all customers subject to the tariff sheet and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1981)). All such motions or protests should be filed on or before August 17, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18749 Filed 8–14–87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3210-8(5)]

Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is making available to the public a document entitled "Guidance of EPA Class I Clean Water Act Administrative Penalty Procedures" which will provide procedural guidance in the assessment of administrative penalties designated as Class I under section 309(g), 33 U.S.C. 1311(g).

EFFECTIVE DATE: This guidance document will be effective on August 17, 1987.

ADDRESS: To obtain a copy of the guidance, write to:

Water Enforcement Diivsion (LE–134W), Attention: Assistant Enforcement Counsel Southern Regions Branch, Office of Enforcement and Compliance Monitoring, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: John W. Lyon, Assistant Enforcement Counsel, Environmental Protection Agency, Telephone 202/475–8177, (FTS) 475–8177.

SUPPLEMENTARY INFORMATION: Section 314 of the Water Quality Act of 1987, Pub. L. 100–4, added section 309(g) to the Clean Water Act (the Act) to provide for the assessment of administrative civil penalties. The statute established two classes of administrative civil penalties, Class I and Class II. Class I administrative civil penalty assessments may not exceed $10,000 per violation, or exceed a total amount of $25,000. Class II assessments may not exceed $10,000 per day for each day during which the violation continues, or exceed a total assessment of $125,000. Both classes of administrative civil penalties may be assessed for violations of section 301, 302, 306, 307, 308, 318, or 405 of the Act, or for violations of any permit condition or limitation implementing any of these sections in a permit issued under Section 402 by the Administrator or by a State, or in a permit issued under section 404 by a State.

This notice is to advise the public of the availability of guidance which the Agency will follow in issuing Class I administrative civil penalty orders. The guidance is written in the form of regulatory amendments with the expectation that EPA will later notice them for proposed rulemaking. An interim final rule guiding the assessment of Class II administrative penalties is also being published in the **Federal Register.**

Lee M. Thomas,

Administrator, Environmental Protection Agency.

Date: August 10, 1987.

[FR Doc. 87–18600 Filed 8–14–87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3248-4]

EPA List of Facilities Prohibited From Receiving Government Contracts Under 40 CFR Part 15

AGENCY: Environmental Protection Agency.

ACTION: EPA list of facilities prohibited from receiving government contracts under 40 CFR Part 15.

SUMMARY: 40 CFR 15.40 requires the Environmental Protection Agency (EPA) to publish in the **Federal Register** semi-annually a list of all persons and facilities prohibited under 40 CFR Part 15 from receiving federal government contracts, grants, loans, subcontracts, subgrants, or subloans. The following list contains the names and locations of the prohibited facilities, as well as the dates they were placed on the list and the effective date of each listing.

DATE: This list is current as of August 17, 1987.

FOR FURTHER INFORMATION CONTACT: Alex Varela, Listing Official, Office of Enforcement and Compliance Monitoring, Environmental Protection Agency, Rm. 112 NE Mall (LE–130A), 401 M St., SW., Washington, DC 20460. Telephone (202) 475–8777.

SUPPLEMENTARY INFORMATION: Pursuant to section 306 of the Clean Air Act (42 U.S.C. 1845 et seq., as amended by Pub. L. 91–604), section 508 of the Clean Water Act (33 U.S.C. 1251 et seq., as amended by Pub. L. 92–500), and E.O. 11738, EPA has been authorized to provide certain prohibitions and requirements concerning the administration of the Clean Air Act and the Clean Water Act with respect to federal contracts, grants, loans, subcontracts, subgrants, and subloans. On April 16, 1975, regulations implementing the requirements of the statutes and Executive Order were promulgated in the **Federal Register** (See 40 CFR Part 15, 40 FR 17124, April 16, 1975, as amended at 44 FR 6911, February 5, 1979). On September 5, 1985, revisions to those regulations were promulgated in the **Federal Register** (See 50 FR 36188, September 5, 1985). The regulations provide for the establishment of a List of Violating Facilities which reflects those facilities ineligible for use in nonexempt federal contracts, grants, loans, subcontracts, subgrants, or subloans

The list of Violating Facilities is comprised of two sublists. Sublist 1, mandatory listing (40 CFR 15.10), includes those facilities listed on the basis of a conviction under section 113(c)(1) of the Clean Air Act or section 309(c) of the Clean Air Act. Sublist 2, discretionary listing (40 CFR 15.11), includes those facilities listed on the basis of continuing or recurring noncompliance with clean air or clean water standards, and:

1. A conviction by a federal court under section 113(c)(2) of the Clean Air Act, or

2. Any injunction, order, judgment, decree (including consent decrees) or other form of civil ruling by a federal, state or local court issued as a result of

noncompliance with clean air or water standards, or

3. A conviction by a state or local court of a criminal offense on the basis of noncompliance with clean air standards or clean water standards, or

4. Violation of an administrative order issued under sections 113(a), 113(d), 167, or 303 of the Clean Air Act of section 309(a) of the Clean Water Act, or

5. A Notice of Noncompliance issued by EPA under section 120 of the Clean Air Act, or

6. An enforcement action filed by EPA in federal court under sections 113(b), 167, 204, 205, or 211 of the Clean Air Act of section 309(b) of the Clean Water Act due to noncomplance with clean air or water standards.

This Notice reflects:

• The removal of the Pioneer Excavating (d/b/a Rocky Mountain Materials and Excavating) Colorado Springs, Colorado facility from Sublist 1 of the List of Violating Facilities. The Pioneer Excavating Colorado Springs facility was added to the List of Violating Facilities on February 13, 1986, based on a conviction obtained against the company under section 309(c)(1) of the Clean Water Act. Pursuant to 40 CFR 15.20, a facility may be removed from Sublist 1 if the Assistant Adminstrator certifies that the condition giving rise to the listing has been corrected. The Assistant Administrator for Enforcement and Compliance Monitoring, U.S. Environmental Protection Agency, certifies that the Pioneer Excavating Colorado Springs facilitiy has corrected the condition which give rise to listing, and has removed the facility from the List of Violating Facilities as of March 31, 1987.

• The removal of the B.F. Goodrich Company Louisville, Kentucky facility from Sublist 2 of the List of Violating Facilities. The facility was added to the List of Violating Facilities on February 10, 1986, based on a determination of countinuing or recurring noncompliance with the Clean Air Act, 42 U.S.C. 113(b) and 40 CFR 61.64(a)(2) and 61.64(e)(1)(ii) (See 51 6470, February 24, 1986). Pursuant to 40 CFR 15.21(a)(3), removal from Sublist 2 is automatic after one year, unless a new basis for listing arises under 40 CFR 15.10, or 40 CFR 15.11(a)(1), (a)(2) or (a)(3), before the expiration of the one-year period. The Assistant Administrator for Enforcement and Compliance Monitoring, U.S. Environmental Protection Agency, certifies that since no new basis for listing exists, the B.F. Goodrich Lousisville, Kentucky facility has been removed the List of Violating Facilities as of February 10, 1987.

• The removal of the Robert E. Derecktor of Rhode Island, Inc. Middetown, Rhode Island facility (REDRI) from Sublist 1 of the List of Violating Facilities. The REDRI facility was added to the List of Violating Facilities on December 29, 1986, based upon a criminal conviction of 24 counts of violating section 309(c) of the Clean Water Act and one count of violating section 113(c) of the Clean Air Act. Pursuant to 40 CFR 15.20, the Assistant Administrator for Enforcement and Compliance Monitoring, U.S. Environmental Protection Agency, certifies that the FRDRI facility has corrected the condition which give rise to listing, and has removed the facility from the List of Violating Facilities as of April 17, 1987.

• The removal of the Seattle, Washington facility of Janco United, Inc. (Janco) from Sublist 1 of the List of Violating Facilities. Janco was added to the List of Violating Facilities on May 5, 1986, based upon a criminal conviction for violating section 309(c) of the Clean Water Act. Pursuant to 40 CFR 15.20, the Assistant Administrator for Enforcement and Compliance Monitoring, U.S. Environmental Protection Agency, certifies that Janco has corrected the condition which gave rise to listing, and has removed the facility from the list of Violating Facilities as of April 29, 1987.

• The removal of the Old Pin Shop, Oakville, Connecticut facility from Sublist 1 of the List of Violating Facilities. The Old Pin Shop facility was added to the List of Violating Facilities on December 19, 1985, based upon a criminal conviction for violating section 113(c) of the Clean Air Act. Pursuant to 40 CFR 15.20, the Assistant Administrator for Enforcment and Compliance Monitoring, U.S. Environmental Protection Agency, certifies that the Old Pin Shop has corrected the condition which gave rise to the listing, and has removed the facility from the List of Violating Facilities as of July 28, 1987.

• The removal of Marine Power and Equipment Company's Lake Union and Duwamish River (Washington) facilities from Sublist 1 of the List of Violating Facilities. The Lake Union and Duwamish River facilities were added to the List of Violating Facilities on April 27, 1987, based upon a criminal conviction of 20 counts of violating section 309(c) of the Clean Water Act. Pursuant to 40 CFR 15.20, the Assistant Administrator for Enforcement and Compliance Monitoring, U.S. Environmental Protection Agency, certifies that Marine Power and Equipment has corrected the condition which gave rise to listing, and has removed the facility from the List of Violating Facilities as of August 4, 1987.

Other additions to and deletions from the List of Violating Facilities will be published periodically as they occur. Facilities on the List also are included in the General Services Administration's "Consolidated List of Debarred, Suspended, and Ineligible Contractors." Subscriptions to this document may be obtained from the U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

List of Violating Facilities

Name Effective date	Location Basis for listing
Sublist 1: Mandatory Listing	
Chemical Formulators	Nitro, West Virginia Facility.
Jan. 29, 1981	Clean Water Act Sec. 309(c)(1).
Waterbury House Wrecking Company.	Waterbury, Connecticut Facility.
Dec. 19, 1985	Clean Air Act Sec. 309(c)(1).
Fleischman's Yeast, Inc Division of Burns. Philp & Company, Ltd.	Sumner, Washignton Facility.
May 14, 1986, effective date of listing.	Clean Water Act Sec. 309(c)(1).
Nov. 14, 1986, effective date of facility's transfer from Nabisco to Burns, Philp.	
Will and Baumer, Inc	Liverpool, New York Facility.
June 10, 1986	Clean Water Act Sec. 309(c)(1).
Johnson and Towers, Inc.	Mount Laurel, New Jersey Facility.
June 17, 1986	Clean Water Act Sec. 309(c)(1).
Hope Resource Recovery, Inc.	Long Island, New York Facility.
Sept. 18, 1986	Clear Air Act Sec. 113(c)(1).
Sea Gleaner Marine, Inc.	Bellevue, Washington Facility.
Oct. 6, 1986	Clean Water Act Sec. 309(c)(1).
Sea Pork Bark Supply.	Tacoma, Washington Facility.
Oct. 21, 1986	Clean Water Act Sec. 309(c)(1).
Ocean Reef Club, Inc.	Key Largo, Florida Facility.
Oct. 22, 1986	Clean Water Act Sec. 309(c)(1).
Irvin Pearlman	Pittsburgh, Pennsylvania Facility.
December 30, 1986	Clean Air Act Sec. 113(c)(1).
Salvatore C. Williams	Pittsburgh, Pennsylvania Facility.
December 30, 1986	Clean Air Act Sec. 113(c)(1).
USM Corp.	New Bedford, Massachusetts Facility.
December 31, 1986	Clean Air Act Sec. 309(c)(1).
Sublist 2: Discretionary Listing	
None	

Dated: August 7, 1987.

Thomas L. Adams, Jr.,

Assistant Administrator for Enforcement and Compliance Monitoring.

[FR Doc. 87-18717 Filed 8-14-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

August 6, 1987.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: None
Title: Sections 1.1404 and 1.1408, Pole Attachment Complaint Procedures
Action: Existing collection in use without an OMB control number
Respondents: Business (including small businesses)
Frequency of Response: On occasion
Estimated Annual Burden: 54 Responses; 162 Hours
Needs and Uses: Congress mandated pursuant to 47 U.S.C. 224 that the FCC ensure that the rates, terms, and conditions under which cable television operators attach their hardware to utility poles are just and reasonable. Section 224 also mandates establishment of an appropriate mechanism to hear and resolve complaints concerning the rates, terms and conditions for pole attachments. Sections 1.1404 and 1.1408 of the Commission's Rules were promulgated to implement section 224. The information will be used by FCC staff to determine the sufficiency of the complaint and calculate the maximum rate under the Commission's formula.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-18690 Filed 8-14-87; 8:45am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Overview Communications Ltd. et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, City and State	File No.	MM Docket No.
A. Chuck Hibbs d/b/a Overview Communications, Ltd., Janesville, WI.	BPCT-861222KE	87-290
B. Blackhawk Broadcasting, Corp., Janesville, WI.	BPCT-870218KE	87-290
C. Tri-M Communications, Ltd., Janesville, WI.	BPCT-870317KE	87-290
D. Channel 47 Limited Partnership, Janesville, WI.	BPCT-870317KF	87-290
E. Harold Corp., Janesville, WI.	BPCT-870317KG	87-290

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

Satellite, D
Air Hazard, C, D
Comparative, A, B, C, D, E
Ultimate, A, B, C, D, E

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Stephen F. Sewell,

Assistant Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 87-18692 Filed 8-14-87; 8:45 am]

BILLING CODE 6712-01-M

Applications For Consolidated Hearing; Ronald H. Livengood et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Ronald H. Livengood, Somerset, KY.	BPH-850711QJ	87-304
B. Cora P. Knight d/b/a Knight Broadcasting Company, Somerset, KY.	BPH-850712N2	
C. Cumberland Communications, Inc., Somerset, KY.	BPH-850712N3 (Dismissed)	

2. Pursuant to 47 U.S.C. 309(e), the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding hearings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

1. Air Hazard, A, B
2. Comparative, A, B
3. Ultimate, A, B

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87-18691 Filed 8-14-87; 8:45 am]

BILLING CODE 6712-01-M

RF Emissions; Editorial Changes Made to the FCC Measurement Procedure for Computers

The Office of Engineerig and Technology announces the availability of an improved Measurement Procedure, MP-4, entitled "FCC Methods of Measurement of Radio Noise Emissions From Computing Devices." The revised document provides greater detail on the procedures used to test computers for compliance with its rules.

MP-4 is the measurement procedure used by the Commission to determine compliance of computers and other digital electronic equipment subject to the interference control requirements in Subpart J of Part 15 of the FCC Rules. Over the past year, it has come to our

attention that a number of manufacturers and independent test firms have experienced difficulty duplicating the measurements performed by the FCC Laboratory. Although there are several suspected reasons for this problem, we thought it would be helpful to industry to specify in greater detail the procedure used by the Commission to measure computers. The revised procedure MP-4, dated July 1987, has a number of minor editorial changes along with greater specificity in the procedure to measure personal computers and peripherals subject to approval (certification) by the Commission. It also has a new title: "FCC Procedure for Measuring FR Emissions From Computing Devices." The revised MP-4 is available from the FCC Consumer Assistance Office, 1919 M Street, NW, Washington, DC 20554.

Major changes to MP-4 will be considered by the Commission when the proposal by the Computer and Business Equipment Manufacturers Association (CBEMA) to revise MP-4 is reviewed later this year.

For more information, contact the Chief, Sampling and Measurement Branch, FCC Laboratory, 7435 Oakland Mills Road, Columbia, MD 21046, telephone number 301-725-1585.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-18712 Filed 8-14-87; 8:45 am]

BILLING CODE 6712-01-M

Radio NDISC Emissions from Computing Devices; Proposed Revision to Reasurement Procedure (MP-4)

The Office of Engineering and Technology solicits comments on a proposal filed by the Computer Business and Equipment Manufacturers Association (CBEMA) seeking major revisions to Measurement Procedure, MP-4, entitled "FCC Methods of Measurement of Radio Noise Emissions from Computing Devices." Comments are requested to assist the Chief Engineer in making a decision to initiate a proceeding to revise MP-4 as suggested by CBEMA. Comments by interested parties on the CBEMA proposal and other aspects of MP-4 are requested by September 30, 1987. Reply comments are due by November 15, 1987.

MP-4 is the measurement procedure used by the Commission's Laboratory to determine compliance of computers and other digital electronic equipment subject to the interference control requirements in Subpart J of Part 15 of FCC Rules. CBEMA argues that in the last five years since MP-4 was adopted by the Commission, the computer industry has undergone dynamic changes necessitating a fresh new review of the measurement procedure. The proposal, which according to CBEMA absorbed more than one year of study and committee work, requests a substantial revision to the current methods of measurement utilized by the FCC and the computer industry in determining the level of radio frequency emissions from computers.

Before considering the major revisions requested by CBEMA, the Office of Engineering and Technology is accepting any comments from interested parties. The comments may be inclusive of the CBEMA proposal or other aspects of MP-4, but are restricted to the measurement procedure. After appropriate review of the comments and proposal, a proceeding may be initiated to revise MP-4.

A copy of the CBEMA proposal may be obtained by contacting: Ms. Laura Brown, Computer and Business Equipment Manufacturers Association, 311 First Street, NW, Washington, DC 20001.

These individuals interested in filing comments shall submit them no later than September 15, 1987 to: Chief, Sampling and Measurement Branch, FCC Laboratory, 7435 Oakland Mills Road, Columbia, MD 21046.

All comments received by September 30, 1987 will be retained at the Laboratory for inspection. Reply comments are requested by November 15, 1987.

For more information about this public notice, contact Art Wall at 301-725-1585.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-18713 Filed 8-14-87; 8:45 am]

BILLING CODE 6712-01-M

Acknowledgement of National Voluntary Laboratory Accreditation Program

The National Voluntary Laboratory Accreditation Program (NVLAP) of the Department of Commerce's National Bureau of Standards (NBS) is acknowledged on the Commission's list of acceptable independent test facilities.[1] This acknowledgement is in the form of an asterisk beside the name of the facility accredited by NBS on the FCC list of independent test facilities.

As part of the Commission's equipment authorization program to control the interference potential of various electronic devices, such as computers, a list of independent test facilities that meet the requirements of § 15.38 of the Rules is published quarterly as a service to manufacturers who must have equipment tested to show compliance with FCC Rules.[1] The filings required by § 15.38 provide minimum information about each laboratory.

Since September 1986, NBS accredited 16 laboratories for selected test methods under a new electromagnetic Laboratory Accreditation Program (LAP). NBS established this LAP at the request of five commercial testing laboratories seeking international recognition for EMC accreditation. International recognition of U.S. Laboratories and test methods have been a high priority of industry groups and equipment manufacturers to aid them in exporting their products to foreign countries.

With NVLAP accreditation, the laboratories automatically receive international recognition for their testing services through NBS' agreements with the United Kingdom's National Measurement Accreditation Service, Australia's National Association of Testing Authorities, and New Zealand's Testing Laboratory Registration Council. Under these agreements, test data reports issued by an accredited laboratory in one system are recognized by the other national accreditation systems.

Under NVLAP procedures, laboratories can apply for accreditation in one or more of the recognized test methods that make up the electromagnetics LAP. The LAP provides recognition to accredited laboratories that are capable of performing specific test methods for conducted emissions, radiated emissions, and terminal equipment compatibility in accordance with FCC standards. Laboratories accredited by NBS under NVLAP for testing compliance of computing devices subject to Subpart J of Part 15 of the FCC Rules will be acknowledged with an asterisk on the Commission's list of test facilities.

For further information, contact Mr. Frank Rose at 202-653-6288 or Mr. Art Wall at 301-725-1585.

[1] The list of test facilities is available by writing to the Chief, Sampling and Measurement Branch, FCC Laboratory, 7435 Oakland Mills Road, Columbia, MD 21046 or by accessing the Laboratory's Public Access Link with a modem and dialing 301-725-1072.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-18714 Filed 8-14-87; 8:45 am]

BILLING CODE 6712-01-M

Tutorials Offered on the Measurement of Personal Computers

The Office of Engineering and Technology announces the scheduling of four tutorial sessions in October, 1987 at the FCC Laboratory in Columbia, Maryland on the testing of personal computer systems.

Personal computers and associated peripherals are subject to certification by the Commission to show compliance with the interference control requirements in Subpart J of Part 15 of the FCC Rules. Compliance is determined by measuring personal computers in accordance with Measurement Procedure, MP-4, entitled "FCC Procedure For Measuring RF Emissions From Computing Devices." Over the past year, it has come to our attention that a number of manufacturers and independent test firms have experienced difficulty duplicating the measurements performed at the Laboratory. To assist industry and these test firms in the way the FCC Laboratory tests personal computer systems, four tutorial sessions have been scheduled at the Laboratory. The sessions have been tentatively scheduled for October 13, 14, 15 and 16, 1987. Each session will be limited to 20 individuals to maximize the benefit of the instructions and demonstrations. Additional sessions will be scheduled if demand exceeds the four sessions. Each session will begin at 10:00 a.m., end at 4:00 p.m. and will cover the measurement procedure for personal computers only. Demonstrations of the radiated and AC powerline conducted testing will be given, after an overview of the procedures. Ample time will also be given for a question and answer session. The sessions are intended only for those individuals already familiar with MP-4. A break for lunch will be given from 12:00 to 2:00 p.m., but attendees must provide for their own lunch as well as their own transportation to the Laboratory.

Individuals interested in attending one of these tutorial sessions, may do so on a first-come basis by contacting: Ms. Karen Deming, FCC Laboratory, 7435 Oakland Mills Road, Columbia, MD 21046, Telephone: 301-725-1585.

Attendance limited to no more than two individuals per organization.

For more information about the contents of the tutorial, contact Art Wall at 301-725-1585.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-18715 Filed 8-14-87; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1672]

Applications for Review of Actions in Rulemaking Proceedings

August 10, 1987.

Applications for review have been filed in the Commission rule making proceeding listed in this Public notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these applications must be filed within 15 days of the date of public notice of the applications in the **Federal Register** See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Greenwood, Seneca, Aiken and Clemson, South Carolina, and Biltmore Forest, North Carolina) (MM Docket No. 86-32, RM's 5006, 5040, 5041, 5217, & 5300) Number of applications received: 2

Notice

The Commission advertently gave Public Notice of two petitions for reconsideration of MM Docket No. 86-294, on two separate dates July 16, 1987 (report no. 1667), and July 28, 1987, (report no. 1670). However, parties wishing to comment on either the first or second reconsideration may do so in accordance with the provisions of the July 28, 1987, Public Notice.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-18716 Filed 8-14-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-794-DR]

Amendment to Notice of a Major-Disaster Declaration; Oklahoma

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma (FEMA-794-DR), dated July 9, 1987, and related determinations.

DATED: August 7, 1987.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: The notice of a major disaster for the State of Oklahoma, dated July 9, 1987, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1987:

Kingfisher County for Public Assistance and Murray County, limited to Category F, for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 87-18674 Filed 8-14-87; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following has been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Society Expeditions Cruise, Inc., 3131 Elliott Avenue, Suite 700, Seattle, WA 98121

Date August 11, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87-18672 Filed 8-14-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisitions of Shares of Banks or Bank Holding Companies; James R. Fraser and Steven Walker

The notificants listed below have applied under the Change in Bank

Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 1, 1987.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *James R. Fraser*, Sandy, Utah, and David E. Worthen, Bountiful, Utah; each to acquire between 18.33 and 22.6 percent of the voting shares of Brighton Bancorp, Salt Lake City, Utah, and thereby indirectly acquire Brighton Bank, Salt Lake City, Utah.

2. *Steven Walker*, Encino, California; to acquire 19.64 percent of the voting shares of Charter National Bancorp, Encino, California, and thereby indirectly acquire Charter National Bank, Encino, California.

Board of Governors of the Federal Reserve System, August 11, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-18663 Filed 8-14-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Company Engaged in Permissible Nonbanking Activities; Plymouth Investment Co.

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 8, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Plymouth Investment Co.*, Plymouth, Nebraska; to acquire Farmers Insurance Agency, Plymouth, Nebraska and thereby engage in insurance agency activities as permitted for small bank holding companies pursuant to § 225.26(b)(8)(vi) of the Board's Regulation Y. These activities will be conducted in the Nebraska Counties of Jefferson, Saline and Gage.

Board of Governors of the Federal Reserve System, August 11, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-18664 Filed 8-14-87; 8:45 a.m.]

BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; SouthTrust Corp., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 8, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *SouthTrust Corporation*, Birmingham, Alabama; to merge with Vista Banks, Inc., Ormond Beach, Florida, and thereby indirectly acquire Bank of Volusia County, Deleon Springs, Florida, and Vista Bank of Marion County, Belleview, Florida.

2. *Summit Bank Corporation*, Atlanta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Summit National Bank, Atlanta, Georgia.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Hoff Investment Corporation*, Lisco, Nebraska, parent of Dalton State Bank, Dalton, Nebraska; to merge with First Nebraska Bancs, Inc., Sidney, Nebraska, and thereby indirectly acquire First National Bank-Sidney, Sidney, Nebraska. Comments on this application must be received by August 28, 1987.

Board of Governors of the Federal Reserve System, August 11, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-18665 Filed 8-14-87; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms under OMB Review

August 11, 1987.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Officer Building, Room 3208, Washington, DC 20503 (202-395-7340)

Proposal to Approve Under OMB Delegated Authority the Discontinuance of the Following Report

1. *Report title:* Dealer Monthly Report
Agency form number: FR 2079
OMB Docket number: 7100-0165
Frequency: monthly
Reporters: Non-primary dealers in U.S. government securities.
Annual reporting hours: 1,248 hours

Small businesses are not affected.

General Description of the Report

This report provides basic information on positions, financing and volume of transactions, as well as financial statements, from non-primary dealers in U.S. government securities dealers. The report was implemented to aid the Federal Reserve's understanding of the market and of trading by these dealers, in view of a series of dealer failures in 1982. The need for the report has been reduced substantially by the passage of the Government Securities Act of 1986, which created a formal regulatory and reporting framework for all brokers and dealers in U.S. government securities.

This information collection was authorized by law [12 U.S.C. 248(a)(2) and 353-359(a)], and was given confidential treatment [5 U.S.C. 552(b)(8)].

Proposal to Approve Under OMB Delegated Authority, the Extension, Without Revision, of the Following Report

1. *Report title:* Daily Report of When-issued Commitments Outstanding
Agency form number: FR 2080
OMB Docket number: 7100-0184
Frequency: daily
Reporters: Primary dealers in U.S. government securities.
Annual reporting hours: 4,320 hours

Small businesses are not affected.

General description of the report: This report collects information on significant "when-issued" commitments of the primary dealers that deal in U.S. government securities with the Federal Reserve Bank of New York. "When-issued" trading (forward delivery trading in U.S. Treasury securities between announcement of the sale and settlement) is monitored by the Federal Reserve in view of substantial credit and market risks involved.

This report is authorized by law [12 U.S.C. 248(a)(2) and 353-359(a)]. Individual respondent data are exempt from disclosure [5 U.S.C. 552(b)(4)].

Board of Governors of the Federal Reserve System, August 11, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-18662 Filed 8-14-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Managment and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on July 31, 1987.

Social Security Administration

(Call Reports Clearance Officer on 301-594-5706 for copies of package)

1. Supplemental Security Income Referral Notice—0960-0324—The information collected by use of Form SSA-L8050-US identifies SSI applicants/recipients potentially eligible for other benefits so that they may file for and receive such benefits. The affected public is comprised of SSI applicants and recipients, State disability determination services agencies and organizations which pay benefits. Respondents: Individuals or households, State or local governments, non-profit institutions. Number of Respondents: 10,000; Frequency of Response: Occasionally; Estimated Annual Burden: 1,667 hours.

OMB Desk Officer: Elana Norden

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-8650 for copies of package)

1. Long Term Care Survey Report Forms—0938-0400—The Long Term Care Survey Report Forms are used by State Agency Surveyors to record the results of their surveys of ICF's and SNF's. These forms are designed to focus review on the outcomes of patient care rather than on the structural and procedural requirements emphasized on traditional surveys. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: Annually; Estimated Annual Burden: 46,175 hours.

2. Medicaid Program Budget Report—0938-0101—The Medicaid Program Budget Report is prepared by the State Medicaid agencies and is used by HCFA for developing national Medicaid budget estimates. Respondents: State or local governments. Number of Respondents; 57: Frequency of Response: Quarterly; Estimated Annual Burden: 5,700 hours.

3. Hospital Provider of Long Term Care Services (Swing-Bed)—0938-0485—This survey form is an instrument used by the State agency to record data collected in order to determine provider compliance with individual conditions of participation and to report it to the Federal government. Respondents: State or local governments. Number of Respondents: 53; Frequency of Response: Occasionally; Estimated Annual Burden: 378 hours.

4. Psychiatric Hospital Medicare Survey Report Form—0938-0378—This survey form is an instrument used by the State agency to record data collected in order to determine compliance with individual conditions of participation and report it to the Federal government. Respondents: State or local government. Number of Respondents: 53; Frequency of Response: Occasionally; Estimated Annual Burden: 251 hours.

5. Medicaid Management Information System—0938-0247—The Medicaid Management Information System (MMIS) is a State-oriented Federally mandated computer system used for Medicaid claims processing and program management. These data elements represent the Federally-imposed recordkeeping requirements of MMIS. Respondents: State or local governments. Number of Respondents: 45; Frequency of Response: Occasionally; Estimated Annual Burden: 2,275,000 hours.

6. Negative Case Action (NCA) Review—0938-0300—HCFA uses the NCA review to identify error rates by States, regions and nations. Respondents: State or local governments. Number of Respondents: 8,600; Frequency of Response: Semiannually; Estimated Annual Burden: 8,041 hours.

OMB Desk Officer: Allison Herron

Family Support Administration

(Call Reports Clearance Officer on 202-245-0652 for copies of package)

1. Statistical Report on Recipients Under Public Assistance Programs—0970-0008—The information collected is

needed to properly administer and monitor the Aid to Families with Dependent Children Program providing information on a quarterly basis on recipients. This data is used by Congress, Federal agencies and others. The affected public is comprised of state welfare recipients. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: Monthly; Estimated Annual Burden: 6,480 hours.

2. Monthly "Flash" Report of Selected Program Data—0970–0071—The information collected by the use of this form is used to monitor program trends and serves as advance indicators of program activity and costs. The affected public is comprised of State and local agencies administering AFDC programs. The forms are completed by State agencies administering AFDC programs. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: Monthly; Estimated Annual Burden: 1,296 hours.

3. Quarterly Report of Recoveries of Over Payments (AFDC)—0970–0038—The information is used to assess the effectiveness of the States recovery efforts for Over Payments in Achieving the goals of the Omnibus Budget Reconciliation Act of 1981. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: Quarterly; Estimated Annual Burden: 10,800 hours.

4. Quarterly Statement of Famis Expenditures (AFDC)—0960–0049—This information is used to monitor development activities in accordance with the States approved advanced Planning Document to determine if States can accomplish the development of the proposed systems. Respondents: State or local governments. Number of Respondents: 31; Frequency of Response: Quarterly; Estimated Annual Burden: 62 hours.

5. WIN Demonstration Program Financial Status Report—0970–0025—The information collected is used to review State expenditures and as a basis for preparing adjustments to the quarterly grant awards to States for the WIN Incentive Demonstration Program. Respondents: State or local governments. Number of Respondents: 28; Frequency of Response: Quarterly; Estimated Annual Burden: 896 hours.

6. Quarterly Application for Child Support Enforcement Program Grant Awards—0970–0014—The information collected on this report constitutes the State agency's request for a grant of Federal funds under the provisions of Title IV-D of the Social Security Act. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: Quarterly; Estimated Annual Burden: 108 hours.

7. Child Support Enforcement Program Quarterly Report of Collections—0970–0013—This report provides information about the amount of child support payments collected by a State in the quarter. The information is needed to calculate grant awards and to prepare reports to Congress. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: Quarterly; Estimated Annual Burden: 1,728 hours.

8. Child Support Enforcement Program Quarterly Report of Expenditures and Prior Quarter Expenditures Adjustments—0970–0012—The expenditure information collected is used to prepare quarterly grant awards to States for operating the child support enforcement program. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: Quarterly; Estimated Annual Burden: 1,080 hours.

9. Child Support Enforcement Program Quarterly Budget Estimates—0970–0011—This report provides information about a State's annual estimate of child support program expenditures. The information is needed to prepare appropriation requests to Congress, to report to Congressional appropriations committees, and to compute State incentive payments. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: Semi-annually; Estimated Annual Burden: 756 hours.

OMB Desk Officer: Elana Norden

Office of Human Development Service

(Call Reports Clearance Officer on 202–472–4415 for copies of package)

1. The Objective Progress Report—0980–0155—The Administration for Native Americans (ANA) has two reporting forms which ANA grantees must utilize during a budget period. This form provides information for reporting of grantee progress during each budget period. Respondents: Businesses or other for-profit, Non-profit institutions. Number of Respondents: 170; Frequency of Response: Occasionally; Estimated Annual Burden: 1,530 hours.

2. Objective Evaluation Report—0980–0144—This Administration for Native Americans has two reporting forms which ANA grantees must utilize during a budget period. This report form provide information for grantee evaluation of progress at the end of each budget period. Respondents: Businesses or other for-profit, Non-profit institutions. Number of Respondents: 170; Frequency of Response: Annually; Estimated Annual Burden: 680 hours.

OMB Desk Officer: Elana Norden

Public Health Service

(Call Reports Clearance Officer on 202–245–2100 for copies of package)

National Institutes of Health

1. Follow-up to Children Exposed to Chloride-Deficient Infant Formula—NEW—This study will determine if children exposed to "chloride-deficient infant formula" suffered any "long-term effects" secondary to this ingestion. The survey instruments will be filled out by parents of children who may be eligible for study. Report will be provided to the Congress. Respondents: Individuals or households, State or local governments. Number of Respondents: 20,659; Frequency of Response: One-time; Estimated Annual Burden: 4,280 hours.

Centers for Disease Control

1. Monitoring System of Adverse Events Following Immunization—0920–0039—This system monitors illnesses following immunization in the public sector. It is designed to detect severe, rare, and previously unrecognized reactions following immunization, and to monitor vaccine lots for unusually high numbers of associated illnesses. Respondents: State or local governments. Number of Respondents: 58; Frequency of Response: Occasionally; Estimated Annual Burden: 2,475 hours.

2. National Hospital Discharge Survey—0937–0004—The National Hospital Discharge Survey provides detailed information on characteristics, diagnoses, surgical and other procedures for patients discharged from short-stay non-Federal hospitals in the United States. The information collected is available in written reports, in unpublished form through standardized in-house tabulations or special tabulations, and on public use tapes. Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 688; Frequency of Response: Occasionally; Estimated Annual Burden: 7,872 hours.

Health Resources Services Administration

1. Uncompensated Services Reporting and Recordkeeping—0915–0077—Health Care Facilities which have received funds under Titles VI and XVI of the PHS act are required to provide prescribed amounts of care to persons unable to pay and to submit to the Secretary data and information which reasonably demonstrates compliance

with this requirement. Individuals denied such care have a right to appeal that denial to the Secretary. Respondents: Individuals or households, State or local governments, Non-profit institutions. Number of Respondents: 4,041; Frequency of Response: Occasionally; Estimated Annual Burden: 1,704,142 hours.

2. Common Reporting Requirements for Urban Indian Health Programs—0915–0096—Congress has mandated that standard reporting requirements be established for 35 urban Indian health programs. Data collected are used for contract monitoring purposes, reports to Congress, establishing indicators, etc. Respondents: Non-profit institutions. Number of Respondents: 35; Frequency of Response: Semi-annually; Estimated Annual Burden: 1,120 hours.

3. Health Education Assistance Loan (HEAL) Program—Forms—0915–0034—The status form permits lenders to grant authorized periods of deferment. The Manifest provides information about HEAL loan activity. The transfer identifies reassigned loans. Lenders use the application to apply for a contract of insurance. Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions. Number of Respondents: 3,349; Frequency of Response: Occasionally; Estimated Annual Burden: 2,674 hours.

OMB Desk Officer: Shanna Koss-McCallum

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202–245–2100

HCFA: 301–594–8650

SSA: 301–594–5706

HDS: 202–472–4415

FSA: 202–245–0652

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, ATTN: (Name of OMB Desk Officer)

Date: August 10, 1987.

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 87–18704 Filed 8–14–87; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Blood Products Advisory Committee

Date, time and place. September 17 and 18, 1987, 9 a.m., Rm. 121, Office of Biologics Research and Review, 8800 Rockville Pike, Bethesda, Maryland.

Type of meeting and contact person. Open public hearing, September 17, 1987, 9 a.m. to 10 a.m.; unless public participation does not last that long; open committee discussion, 10 a.m. to 11 a.m.; closed presentation of data, 11 a.m. to 4:30 p.m.; closed committee discussion, September 18, 1987, 8:30 a.m. to 1 p.m., Clay Sisk, Center for Drugs and Biologics (HFN–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee reviews and evaluates available data on the safety, effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss methods for reevaluation of persons who are currently defferred from donating blood because of reactive hepatitis B surface antigen (HBsAg) tests, but which upon further more specific testing again may be acceptable as donors.

Closed presentation of data. The committee will discuss trade secret and/or confidential commercial information relevant to pending investigational new biological products and a license application for a designated orphan drug, alpha-1-proteinase inhibitor for use in replacement therapy in the alpha-1-proteinase congenital deficient state. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Vaccines and Related Products Advisory Committee

Date, time, and place. September 21, 1987, 8:30 a.m., and September 22, 1987, 9 a.m., Building 29, Rm. 121, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, September 21, 1987, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; closed committee deliberations, 9:30 a.m. to 5 p.m.; closed committee deliberations, September 22, 1987, 9 a.m. to 2:30 p.m.; Jack Gertzog, Center for Drugs and Biologics (HFN–31), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of vaccines and related biological products intended for use in the diagnosis, prevention, or treatment of human diseases. The committee also reviews and evaluates the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to pending license applications and status of IND's in the Office of Biologics Research and Review. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Clinical Chemistry and Clinical Toxicology Devices Panel

Date, time and place. September 21 and 22, 1987, 9 a.m., Rm. 337A–339A, Hubert H. Humphrey Bldg., 200 Independence Ave., SW., Washington, DC.

Type of meeting and contact person. Open public hearing, September 21, 1987, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 m.; open presentation of data, 1 p.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; open public hearing, September 22, 1987, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. 12 m.; open presentation of data, 1 p.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; Kaiser Aziz, Center for Devices and Radiological Health (HFZ–440), Food and Drug

Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested person may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make oral presentations should notify the contact person before September 1, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss two premarket approval applications: (1) Histochemical assay designed to detect estrogen binding cancer cells in human breast cancer, and (2) radioreceptor assay designed to measure estrogen receptors in tissue cytosol in the management of breast cancer patients.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information relevant to the premarket approval applications for the above histochemical and radioreceptor assays. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Circulatory System Devices Panel

Date, time, and place. September 25, 1987, 8:30 a.m., Rm. 703A, Hubert H. Humphrey Bldg., 200 Independence Avenue SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9 a.m.; open committee discussion, 9 a.m. to 2 p.m.; closed committee deliberations, 2 p.m. to 4 p.m.; Keith Lusted, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7373.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of medical devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 11, 1987, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications (PMA's) for two percutaneous transluminal coronary angioplasty (PTCA) catheters.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information regarding the PMA's listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may

be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: August 10, 1987.

John A. Norris,

Acting Commissioner of Food and Drugs.

[FR Doc. 87-18669 Filed 8-14-87; 8:45am]

BILLING CODE 4160-01-M

[Docket No. 87F-0239]

Filing of Food Additive Petition; Hercules, Inc.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Hercules, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polyamide-epichlorohydrin water-soluble thermosetting resins prepared by reacting *N*-methyl-bis(3-aminopropyl)amine with oxalic acid and urea or dimethylglutarate to form a basic polyamide and further reacting the polyamide with epichlorohydrin. The polyamide-epichlorohydrin resins will be used to impart wet strength to paper and paperboard in contact with aqueous and fatty foods.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B3986) has been filed by Hercules, Inc., Hercules Plaza, Wilmington, DE 19894, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous aNd fatty foods* (21 CFR 176.170) be amended to provide for the safe use of polyamide-epichlorohydrin water-soluble thermosetting resins prepared by reacting *N*-methyl-bis(3-aminopropyl)-amine with oxalic acid and urea or dimethylglutarate to form a basic polyamide and further reacting the polyamide with epichlorohydrin. The polyamide-epichlorohydrin resins will be used to impart wet strength to paper and paperboard in contact with aqueous and fatty foods.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 10, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-18668 Filed 8-14-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87M-0236]

Paco Pharmaceutical Services, Inc.; Premarket Approval of Charter Labs Preserved Saline Solution

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Paco Pharmaceutical Services, Inc., Lakewood, NJ, for premarket approval, under the Medical Device Amendments of 1976, of the Charter Labs Preserved Saline Solution. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by September 16, 1987.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On April 14, 1987, Paco Pharmaceutical Services, Inc., Lakewood, NJ 08701, submitted to CDRH an application for premarket approval of the Charter Labs Saline Solution for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses.

On May 29, 1987, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On June 25, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of the Charter Labs Preserved Saline Solution states that the solution is indicated for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of the approval of a new solution for use with an approved soft contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or

at such other time as CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 16, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: August 7, 1987.

James S. Benson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 87–18670 Filed 8–14–87; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings:

Dallas District Office, chaired by Gerald F. Vince, District Director. The topics to be discussed are food safety and imports.

Date: Thursday, August 27, 1987, 10 a.m. to 11:30 a.m.

Address: 727 East Durango Blvd., Rm. B–406, San Antonio, TX.

For Further Information Contact: Juan A. Tijerina, Consumer Affairs Officer, Food and Drug Administration, 727 East Durango Boulevard, Room B–406, San Antonio, TX 78206, 512–229–6737.

Detroit District Office, chaired by Alan L. Hoeting, District Director. The topics to be discussed are health claims on food labels and treatment use of investigational new drugs.

Date: Monday, August 31, 1987, 9 a.m. to 10:15 a.m.

Address: Indiana Convention Center, 100 South Capitol Ave., Rm. 138, Indianapolis, IN 46204.

For Further Information Contact: L. M. Goossens, Consumer Affairs Officer, Food and Drug Administration, 575 North Pennsylvania Street, Room 693, Indianapolis, IN 46204, 317–269–6500.

Detroit District Office, chaired by Alan L. Hoeting, District Director. The topic to be discussed is health claims on food labels.

Date: Tuesday, September 15, 1987, 10 a.m.

Address: George Potter Larrick Bldg., Conference Room, 1560 East Jefferson St., Detroit, MI 48207.

For Further Information Contact: Evelyn DeNike, Consumer Affairs Officer, Food and Drug Administration, 1560 East Jefferson Street, Detroit, MI 48207, 313–226–6260.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: August 7, 1987.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–18671 Filed 8–14–87; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[HSQ–148–GNC]

Medicare Program; Selected Performance Information on Hospitals Providing Care to Medicare Beneficiaries

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice announces our intent to release, through a HCFA publication, selected statistical information on the performance of hospitals participating in the Medicare program. We believe that information about hospitals' overall post-admission mortality rates and specific mortality rates for certain medical conditions will be a valuable tool for Peer Review Organizations (PROs) for focusing on potential quality of care problems, for hospitals in focusing their efforts on improving the quality of care they provide, and for consumers in making decisions on obtaining health care. This information release is one part of HCFA's continuing initiative to promote quality of care which encompasses a broad range of regulatory, operational, and research efforts.

This notice describes the areas of concentration and summarizes the analytical methodology that we propose to use to produce this information.

DATE: To be considered, comments on this notice must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on September 14, 1987.

ADDRESS: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ–148–GNC, P.O. Box 26676, Baltimore, Maryland 21201.

If you prefer, you may deliver your comments to one of the following locations:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, or,

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Md.

In commenting, please refer to file code HSQ–148–GNC. Comments will be available for public inspection as they are received, beginning approximately 3 weeks after publication of the notice, in Room 309–G of the Departmental Offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT: Harvey Brook, 301-597-2752.

SUPPLEMENTARY INFORMATION:

Background

The Health Care Financing Administration (HCFA) has undertaken a major quality of care initiative. Some of the critical components of this initiative include improving the measurement of quality; improving the methodologies used to analyze the date HCFA collects on a routine basis; and improving the distribution and application of understandable and useful information.

Bills submitted by hospitals for services furnished to Medicare beneficiaries comprise one of the data bases HCFA maintains. Medicare hospital bills contain information, for example, on a patient principle and secondary diagnoses, age, sex, discharge date, etc. As part of the quality of care initiative, HCFA has conducted a sophisticated statistical analysis of the hospital bill data. We believe that the information produced from the analysis relating to the performance of individual hospitals with respect to post-admission mortality, when properly presented and understood, can be useful to consumers, hospitals, and Peer Review Organizations (PROs). Specifically, we intend that this information be used by consumers in making decisions about their health care and by hospitals in improving performance and internal management. It can also be used by PROs to focus on areas of potential quality problems.

A critical aspect of this effort will be the role of PROs in working with hospitals to validate the information and provide assistance in the identification and resolution of problems. HCFA may direct PROs to focus some review efforts in appropriate areas. Beyond this, PROs will have broad latitude to provide educational support, technical assistance, and additional medical and analytic expertise to hospitals in analyzing and following up on the information.

Initial Release of Information

In March 1986, we released to PROs lists of hospitals that HCFA had identified as outliers when their actual performance was compared with expected performance in terms of overall mortality and readmissions, and of mortality related to certain medical conditions. The lists were based on data from bills submitted by hospitals for services furnished in 1984. These lists were designed as a crude screening device to assist the PROs in focusing their resources on areas of potential problems. These lists were subsequently released to the public because of requests made under the Freedom of Information Act. Because the lists were designed to assist PROs and were not designed for public use, the result of the public disclosure was considerable confusion and misinterpretation. Our intention this year is to release hospital mortality information in a format carefully designed to be understandable. It is based on an analytic model and a statistical methodology that reflects the best technical advice available to the Department. We realize, however, that our model for predicting a particular hospital's expected mortality rate is limited by the kinds of information available to us on Medicare bills and general information on the hospitals involved. The model remains simply one indicator of potential quality distinctions among hospitals. This year's model is an improvement over last year's. We will continue to refine the model as additional information becomes available to us.

Purposes of this Notice

The purposes of this notice are: (1) To announce that we plan to publish, through annual HCFA publication, selected statistics which we believe provide information about the performance of hospitals; and (2) to describe the analytical methodology that we propose to use to develop the information for release in 1987. We propose to issue an information release in December 1987. It will be prepared on the basis of analysis of data from bills submitted for services furnished in 1986. As currently planned, the information released to the public in December 1987 will present, for each short-term, acute care hospital that treated Medicare beneficiaries in 1986, the number of beneficiaries it treated, the percentage of beneficiaries who died within 30 days of admission, and the expected percentage of deaths, calculated on the basis of the overall national experience with patients of similar age, sex, incidence of complicating diseases, and prior hospitalizations in 1986. The expected percentage of deaths will be presented as a range of such rates which includes the values that would be expected for 95 percent of all cases.

For beneficiaries with more than one hospital admission in 1986, the analysis will be performed on the last admission in the year for any given Medicare beneficiary. While other techniques could be used which base the analysis on the first admission or by following the patient by means of survival analysis, expert advisors recommended that the analysis be based on the last admission because this would provide the most accurate and comprehensible results.

Data will be presented on deaths following admissions for any cause and, separately, for admissions within 16 distinct diagnostic categories for Medicare patients. These categories are derived from the diagnostic codes available to physicians to describe the conditions of patients and are reported on each hospital bill submitted for a Medicare patient. These categories were selected to coincide with major medical disciplines in a hospital and to distinguish between conditions with a high and low probability of death. We believe that this arrangement would be most helpful to users. The 16 categories capture about 80 percent of deaths associated with hospitalization and about 70 percent of patients. Although there could be different aggregations of diagnostic categories, expert clinicians advised us that these 16 represent the most appropriate categorization.

We recognize that any release of information that is based on a statistical analytic review of data about care outcomes is subject to questions on the methodology and to criticism. Consequently, we are soliciting public comments on the type of information we plan to release and the methodology we intend to use to analyze the data on hospitals. We have consulted with clinicians, medical services research experts, nationally recognized statistical experts, and the representatives from a wide range of consumer, provider, and academic organizations. More specifically, we consulted with the heads of statistics departments of some of the most prestigious universities in the United States, with health services researchers from the most renowned research organizations, practicing clinicians, and with policymakers from the top consumer and health care industry associations. We also have convened two quality of care symposia. We will continue these consultations on an ongoing basis. In addition, we intend that the methodology to be applied to the 1986 data and future analysis and releases will take into consideration the public comments that we receive in response to this notice and further recommendations of experts.

Prior to the December release of the statistical information, we will contact each hospital, provide the hospital with data on the deaths being attributed to it, and give it 30 days to comment. Information furnished by the hospitals in their responses will be included as part of the information release.

Information To Be Contained in Releases and Methodology To Be Used to Analyze Data

As noted, the information in the release is the product of a statistical analysis of Medicare data which HCFA routinely collects from all hospitals participating in the Medicare program. The statistics are presented in the hope that they will serve the public and the hospitals in their common interest of improving quality of care.

Releasing mortality statistics is a complicated and controversial undertaking since the mortality rate at a given hospital reflects, among other factors, the age, sex, diagnosis, and severity of illness of patients admitted to that hospital. Characteristics affecting health and the probability of death will vary among the patient populations served by individual hospitals. Consequently the mortality rates one might expect to see in different patient populations will vary. In an attempt to make the mortality statistics more readily comparable among hospitals, we will present the predicted mortality rate for a given hospital as a range that includes 95 percent of its probable values, to be compared to the hospital's actual mortality rate.

The usefulness of this approach depends upon the accuracy with which mortality rates can be predicted and the stability of these rates for the specific population of each hospital. First, not all of the factors affecting the probability of death in a particular case, most notably severity of illness, are included in the predictive model because information on them is not readily available. Thus, a difference between a hospital's actual and expected mortality rates cannot be definitely construed as reflecting especially high or low quality of care. This difference may, in fact, result from factors not included in the predictive model. We have started what will be an ongoing effort involving all interested parties in improving the accuracy of mortality predictions by refining the model and the methodology.

A second important consideration in reviewing and applying such statistics is the number of individuals admitted to each hospital. The smaller the number of admissions, the less reliable are the statistics, as the impact of random variation of outcomes in individual cases is greater.

The statistical information to be included in the releases will be developed by means of the proposed analytical methodology summarized in this notice and described in the appendix.

We propose to include the following specific information in the December 1987 release:

1. An alphabetical listing, arranged by State, of hospitals with city and State location. Included in this listing will be a page location, if appropriate, where comments provided by the hospital can be found;

2. For each hospital, the number of Medicare beneficiaries treated;

3. For each hospital, the actual proportion of Medicare beneficiaries treated who died within 30 days of admission. In all instances, the admission used will be the last in 1986 for any given patient;

4. For each hospital, the proportion of Medicare beneficiaries treated who are expected to have died on the basis of the nationally estimated probability of death for patients who are similar in terms of age, sex, and the incidence of complicating conditions. The expected mortality rate will be presented as a range which will include 95 percent of its probable values.

5. The information cited in terms 2, 3, and 4 for each hospital for the following medical conditions:

• High Risk
—Severe acute heart disease
—Severe chronic heart disease
—Pulmonary disease
—Renal Disease
—Severe trauma
—Sepsis
—Metablic and electrolyte disorders
—Stroke
—Cancer
—Gastrointestinal catastrophies
• Low Risk
—Gynecologic disease
—Urologic disease
—Orthopedic conditions
—Low risk heart disease
—Gastrointestinal disease
—Ophthalmologic disease

These categories were developed by grouping the diagnostic codes and were endorsed by expert clinicians. They are useful because they represent distinct categories of hospital services and performance and because they represent the majority of admissions. In sum, the clinicians developed broad categories into which, in their judgment, almost all of the ICD-9 codes can appropriately be grouped. These broad categories provide an understandable breakdown of the major causes of hospitalization for Medicare beneficiaries. As such, they are potentially useful to consumers making decisions relating to obtaining quality health care and to hospitals in evaluating their performance in providing quality health care.

The proposed 30-day interval was selected because it is the accepted post-operative period and was extended, by analogy, to medical admissions. A longer period of observation entails a greater likelihood of attributing deaths due to causes unrelated to the condition that necessitated the hospitalization to that hospital stay.

Deaths occurring in and out of the hospital should serve as the basis for the assessment of hospital performance because counting only those deaths that occur in the hospital would be misleading. This is because in-hospital deaths are closely correlated with the length of stay, which may vary considerably for reasons related, for example, to administrative practice rather than to the condition of the patient.

Differences among hospitals in terms of case-mix will be taken into account by stratifying patients into diagnostic categories. The contributions to the probability of dying associated with demographic factors (age, sex), complicating diseases, and status as a transfer patient will be calculated by means of logistic regression.

We are publishing a more detailed description of the proposed methodology as the apendix to this notice. We will provide a detailed description of the final methodology that is applied to the data to any individual who requests it in writing. Direct all requests for this information to: Thomas G. Morford, Director, Health Standards and Quality Bureau, Health Care Financing Administration, 2-D-2 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

After the December 1987 release, we will continue to refine the analytic methodologies and data validation techniques. We intend to develop other measures of quality, to assist PROs in working with hospitals to improve hospital performance, and to work with major health care and consumer organizations to improve the educational value of the information for both consumers and providers.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: August 7, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Appendix—Regression-Based Analysis of Medicare Hospital Mortality Data

A. Summary Description of Methodology

The assessment of mortality rates associated with hospitalization will consist of comparisons of the proportions of patients of a hospital who died within 30 days of their last admission in the calendar year with the proportion who would have been expected to die if the mortality patterns in the hospital paralleled those observed nationally for patients with the same characteristics. The predicted mortality rate is computed by assessing the risk of death associated with demographic characteristics (age, gender), causes for admission (patients will be grouped into 16 distinct diagnostic categories and a 17th representing the others), additional diseases, number of prior hospitalizations, and status as a patient transferred from another hospital. Analyses will be performed by means of logistic regression on patients within the diagnostic categories. The stability and validity of the predictive models will be assessed by cross-validation. The probable range of the predicted mortality rates will be estimated analytically and empirically.

B. Technical Description of Methodology

1. Description of the Data

The data base contains the survival experience of about 6,500,000 Medicare beneficiaries who entered one of about 6,000 short-term, acute care hospitals in one calendar year (1986). (The number of hospitals will vary among the diagnostic categories because of specialization and because some very small hospitals will not have had Medicare patients in all of the categories.) The following patient descriptors will be used:

- Age
- Gender
- Principal diagnosis
- Additional diagnoses (up to four)
- Number of prior hospitalizations
- Status as a transfer patient from another hospital
- Date of admission
- Date of death

Patients will be grouped into 16 distinct diagnostic categories by means of the principal diagnosis, with the 17th category contining all others. The 16 diagnostic categories follow medical disciplinary lines, distinguished among high risk and low risk conditions, and account for 80 percent of the deaths and 70 percent of the hospitalized patients.

The outcome measure will be the alive/dead status of each patient at 30 days after the last hospital admission. The 30-day interval is accepted as the post-operative period, applies to medical as well as surgical admissions, and extends beyond the last hospital discharge.

Even though a patient may undergo multiple admissions in a 30-day interval prior to death, the patient's last admission during the relevant calendar year will be evaluated. In order to have 30 days of followup for patients admitted on December 31, discharge data up to January 31 of the following year will be used.

The proposed analysis use logistic regression with "alive/dead" at 30 days post-hospitalization as the outcome. Survival curves will be used to assess whether the patient's full experience is adequately represented by the survival probability at a fixed time point.

2. Modeling

a. *Estimation of logistic model coefficients.* Suppose that—

$$\ln\left(\frac{p}{1-p}\right)=b'x+e$$

is the appropriate model where p is the proportion of patients surviving to 30 days, x is a vector of covariates, and b is a vector of coefficients to be estimated. In particular, the elements of b maximize the log-likelihood

$$\Sigma\{d\log p+(1-d)\log(1-p)\},$$

where the sum is over all persons, p has the relation to b and x given above, and d has a value of 0 or 1 depending on whether the patient has survived 30 days following the index admission or has died in that interval.

To deal with the large data set, note that there are two sorts of elements in x, (age (grouped by intervals), gender, comorbidities, number of prior hospitalizations, transfer status), and all the diagnostic categories. The latter variables are assumed orthogonal (one diagnosis per patient) and so, if age, gender, comorbidities, prior hospitalizations, and transfer status were not in the model, the likelihood could be written as the sum over the diagnostic categories, that is, 17 separate terms. Assume now that there is a different dependence of 30 days mortality on age, gender, comorbidities, prior hospitalizations, and transfer status in each diagnostic category, that is, an (age, gender, comorbidities, prior hospitalizations, transfer status) x diagnostic category interaction. This can be modeled by separately maximizing the logistic regression likelihood within each diagnostic category. Either Newton-Raphson iteration or iteratively reweighted least squares will be used for likelihood maximization.

b. *Estimating 30-day survival and its variance in a hospital.* Suppose that the logistic regression model for the ith diagnostic category is—

$$\ln\frac{p_i}{1-p_i}=b_i'x$$

which contains only terms for age, gender, comorbidities, prior hospitalizations, and transfer status. Suppose, furthermore, that x_{ijk} is the (age, gender, comorbidity) vector for person k in hospital j with diagnosis i; $k=1,\ldots,n_{ij}$. Then the predicted number of deaths in hospital j from all causes is—

$$Dj=\Sigma\Sigma\frac{\exp(b'_i x_{ijk})}{1+\exp(b'_i x_{ijk})}$$

where the first sum is over diagnoses indexed by i, and the second sum is over persons $k=1,\ldots,n_{ij}$. Denoting the observed number of deaths in the jth hospital by d j, we can now form the (unstandardized) residuals $R_j=d_j-D_j$. It may be shown that the variance of R_j is composed of the sum of two terms. The first term is—

$$\mathrm{var}(D_j)=\Sigma\}\Sigma\Sigma\,p_{ijk}(1-p_{ijk})\,p_{ijk'}(1-p_{ijk'})\,x'_{ijk}C(b_i)x_{ijk'}\}$$

where the first sum is over diagnoses labeled by i, and the second and third sums are over pairs of persons, k and k', in the jth hospital with diagnosis i. This may be estimated by substituting estimates for p_{ijk} and $p_{ijk'}$ where appropriate $C(b_i)$ is the covariance matrix of the logistic regression coefficients for diagnosis i, and x_{ijk} is the vector of covariates (age, gender, comorbidities, transfer status) of patient k with diagnosis i at hospital j.

The second term is

$$\mathrm{var}(dj)=\Sigma\,n_{ij}\delta_{ij}(1-\delta_{ij})$$

where n_{ij} is the number of patients in hospital j with diagnosis i,$\hat{\delta}_{ij}$ is the estimated probability of death by 30

days among persons with diagnosis i in hospital j and the sum is over diagnoses.

c. *Validating the model.* Cross-validation will be used to infer how the model fares with new data without actually requiring fresh samples [Efron, 1982, 1985]. It provides an organized format in which the data (the patients) are divided into "training" and "test" sets; the model is developed using the former and applied using the latter.

d. *Further estimation of the variability of the residuals.* Although confidence intervals may be constructed for the predicted probability of death associated with admission to a given hospital, and for the difference between the actual and the predicted probabilities (the residuals) based on the covariance matrices of the regression coefficients, such an approach assumes the applicability of a particular distribution of the residuals. Therefore, an empirical approach, Efron's bootstrapping, will also be used to provide tolerance intervals for the difference of predicted and observed, hospital-specific mortality. The bootstrap method generates and saves these differences by hospital within each diagnostic category for multiple iterations involving populations of equal size but randomly assembled from the actual. The result is a distribution of predicteds and residuals for each diagnostic category, and, therefrom, for the aggregate admission for each hospital. For each hospital, the 10 percent and 90 percent or the 5 percent and 95 percent points, for example, of the bootstrap distribution may be used as tolerance intervals.

References

Anderson, J.A. (1973) Logistic discrimination with medical applications, in: Cacoullos, T. editor, Discrimination Analysis and Applications, pp. 1–15, Academic Press: New York.

Barnett, V. and Lewis, T. (1978) Outliers in Statistical Data, John Wiley: New York.

Efron, B. (1978) Regression and ANOVA with 0–1 data: measures of residual variation, Journal of the American Statisical Association, 73, pp. 113–121.

Efron, B. (1982) The Jacknife, the Bootstrap, and other Resampling Plans, SIAM: Philadelphia.

Efron, B. (1985) How biased is the apparent error rate of a logistic regression? Technical Report No. 102, Division of Biostatistics, Stanford University.

Pregibon, D. (1981) Logistic Regression Diagnostics, Annals of Statistics, 9, pp. 705–724.

[FR Doc. 87–18813 Filed 8–13–87; 1:58 pm]

BILLING CODE 4120-03-M

Public Health Service

Cancellation of the Request for Establishment of Collaborative Agreement for the Preclinical and Clinical Development of 3'-Cyano-2',3'-Dideoxythymidine as an Anti-Retroviral Agent Useful in the Treatment of Acquired Immunodeficiency Syndrome (AIDS)

AGENCY: Department of Health and Human Services, Public Health Service (PHS).

ACTION: Cancellation of Notice.

SUMMARY: The Department of Health and Human Services announces the cancellation of its solicitation to establish a collaborative agreement with an industrial sponsor for the preclinical and clinical development of 3' -Cyano-2' ,3'-dideoxythymidine. This notice appeared in the **Federal Register** of July 10, 1987 (52 FR 26091). Due to a technical difficulty affecting the availability of this compound, the PHS is withdrawing its solicitation for the collaborative development. In the event that this obstacle to the development of 3'-cyano-2' ,3'-dideoxythymidine is overcome the PHS will announce a solicitation in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Dr. Marcia Browne, Special Assistant for Clinical Science, DCT, National Cancer Institute, Building 31, Room 3A49, Bethesda, MD 20892.

Dated: August 10, 1987.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 87–18759 Filed 8–14–87; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit For Marine Mammals

On April 15, 1987, a notice was published in the **Federal Register** (52, FR 12262) that an application had been filed with the Fish and Wildlife Service by Assistant Regional Director, Fish and Wildlife Enhancement (PRT# 717318) for a permit to take Southern sea otters (*Enhydra lutris nereis*) for the purpose of scientific research.

Notice is hereby given that on August 12, 1987, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407), and the Endangered Species Act of 1973 (16 U.S.C. 1539), the Fish and Wildlife Service issued a permit subject to certain conditions set forth therein.

The permits are available for public inspection during normal business hours at the Fish and Wildlife Service's Office in Room 611, 1000 North Glebe Road, Arlington, Virginia 22201.

Dated: August 12, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87–18708 Filed 8–4–87; 8:45 am]

BILLING CODE 4310-55-M

Issuance of Permit For Marine Mammals

On June 25, 1987, a notice was published in the **Federal Register** (52, FR 23899) that an application had been filed with the Fish and Wildlife Service by Director, California Department of Fish and Game (PRT# 719453) for a permit to take Southern sea otters (*Enhydra lutris nereis*) for the purpose of scientific research.

Notice is hereby given that on August 12, 1987, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407), and the Endangered Species Act of 1973 (16 U.S.C. 1539), the Fish and Wildlife Service issued a permit subject to certain conditions set forth therein.

The permits are available for public inspection during normal business hours at the Fish and Wildlife Service's Office in Room 611, 1000 North Glebe Road, Arlington, Virginia 22201.

Dated: August 12, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87–18709 Filed 8–14–87; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

Iditarod National Historic Trail Advisory Council; Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Iditarod National Historic Trail (INHT) Advisory Council will meet to advise the Secretary of the Interior, through the designated official, with regard to the implementation of a comprehensive management plan for the Iditarod National Historic Trail, Alaska.

Designated Official: John Rumps, District Manager, Anchorage District Office, Bureau of Land Management.

DATES: September 16 and 17, 1987.

PLACE: Anchorage District Office, 6881 Abbott Loop Road, Anchorage, AK 99507.

Sandra Dunn,

Acting District Manager.

[FR Doc. 87-17970 Filed 8-14-87; 8:45 am]

BILLING CODE 4310-JA-W

[ES-970-07-4121-14-2410; ES 36585]

Request for Public Comment on Fair Market Value, Maximum Economic Recovery and the Environmental Assessment; Emergency Coal Lease Application ES 36585, KY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public comment.

SUMMARY: The Bureau of Land Management requests public comment on the fair market value, maximum economic recovery and the environmental assessment of certain coal resources it proposes to offer for competitive lease sale.

The lands included in Emergency Coal Lease Application ES 36585 are located in Clay County, Kentucky and are described as follows

Chap Branch Tracts

Part of Tracts R-625 and R-744 (Metes and Bounds)

Containing approximately 230.94 acres.

The coal ownership is split with the Federal share being 1/20th. The remaining 19/20th's is in private ownership. The total acreage includes the access entries from the adjacent existing underground mine. The Manchester coalbed of the Breathitt Formation, is ranked as high volatile, "A" bituminous. The coal is low ash and low sulphur.

The area contains approximately 2.29 million tons of mineable coal. The two Forest Service tracts contain approximately 0.97 million tons of mineable coal, of which the Federal share is 0.05 million tons. All coal on the tract is considered mineable. The overburden exceeds 100 feet everywhere on the tract. Mining may show that the coal in the north of the tract, next to Goose Creek, is unmineable due to the competency and thinness of the overburden. This could reduce the estimated total and Federal mineable reserves. The applicant calculates a recovery factor of 0.67, which seems reasonable for a continuous miner operation. The recoverable reserves are 1.54 million tons total and 0.033 million tons Federal. The expected mine life is ten years.

The public is invited to submit written comments on the fair market value and the maximum economic recovery of the tract.

In addition, notice is also given that a public hearing will be held on September 22, 1987, on the environmental assessment, the proposed sale, the fair market value, and the maximum economic recovery of the proposed lease tracts.

DATES: Comments must be received on or before September 22, 1987.

ADDRESSES: For more complete data on this tract, please contact Mr. Henry Beauchamp at (601) 965-4405, or at the Jackson District Office, Bureau of Land Management, 300 Woodrow Wilson Drive, Suite 326, Jackson, Mississippi 39213.

The public hearing will be held in September 22, 1987 at 10:00 a.m., at the Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304.

FOR FURTHER INFORMATION CONTACT: Ms. Ivy Garcia at (703) 274-0151.

SUPPLEMENTARY INFORMATION: In accordance with the Federal coal management regulations 43 CFR Parts 3422 and 3425, not less than 30 days prior to the publication of a notice of sale, the Secretary shall solicit public comments on fair market value appraisal and maximum economic recovery and on factors that may affect these two determinations. Proprietary data marked as confidential may be submitted to the Bureau of Land Management, Jackson District Office, 300 Woodrow Wilson Drive, Suite 326, Jackson, Mississippi 39213 in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on fair market value and maximum economic recovery, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304 during regular business hours (7:30 a.m. to 4:00 p.m.) Monday through Friday.

Comments should be sent to the Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304 and should address, but not necessarily be limited to, the following information:

1. The method of mining to be employed in order to obtain maximum economic recovery of the coal;

2. The impact that mining the coal in the proposed leasehold may have on the area, including, but not limited to, impacts on the environment; and

3. Methods of determining the fair market value of the coal to be offered.

The coal characteristics given above may or may not change as a result of comments received from the public and changes in market conditions that occur between now and the time at which final economic evaluations are completed.

G. Curtis Jones, Jr.,

State Director.

[FR Doc. 87-18550 Filed 8-14-87; 8:45 am]

BILLING CODE 4310-GJ-M

Availability of Draft Environmental Impact Statement and Environmental Impact Report; Land Tenure Adjustment Project; California Desert Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management has released, for a 90-day public review, a Draft Environmental Impact Statement and Environmental Impact Report (EIS/EIR) for amendments to the California Desert Plan and the San Bernardino County General Plan (to include development of a safety overlay) as part of the Land Tenure Adjustment Project proposed jointly by the Bureau of Land Management (BLM), Barstow and Ridgecrest Resource Areas, California Desert District, and the Department of Defense (DoD), Edwards and George Air Force Bases. The Project includes 2.5 million acres of public and private land within Kern, Los Angeles, and San Bernardino Counties in California. The China Lake Naval Weapons Center serves as the northern boundary of the project area with Fort Irwin Road and Highway 15 as the eastern, the Angeles National Forest as the southern, and the Tehachapi Mountains as the western boundaries.

SUPPLEMENTARY INFORMATION: The Land Tenure Adjustment project stems from BLM concerns regarding resource management effectiveness where a checkerboard landownership pattern prevails in the Barstow Resource Area. Valuable resources—from fossils to petroglyphs to tortoise habitat to recreation areas—are essentially unprotectable and unmanageable due to the ownership/authority changing every mile. This checkerboard pattern

promotes "leapfrog" development, a land use incompatible with the San Bernardino County General Plan policies of creating a logical and orderly residential pattern, directing new urban development to areas where requisite urban services are available, and supporting an essentially open, rural character of the desert.

To futher complicate management, the Department of Defense has three airspace corridors overflying portions of the project area. These corridors include: (1) Ingress into George Air Force Base; (2) an expanded Precision Impact Range Area near Edwards Air Force Base; and (3) a supersonic/low flying test area south of the China Lake Naval Weapons Center.

The management issues (problems, concerns, opportunities) addressed in the draft EIS/EIR include: (1) Landownership Pattern—the checkerboard pattern results in inefficient and costly management of the public resources as well as the lack of county services. The Proposed Action delineates areas where public land would be consolidated through voluntary land exchanges of private inholdings (205,000 acres of private land—consolidation zones), areas where the ownership would remain as is (139,000 public and 134,000 private land acres—retention zones), and areas where public land would be disposed of as base lands for the exchanges (158,000 acres of public land—public land disposal zone). (2) Multiple Use Classifications—overflying DoD activities were not considered in the designation of public land under various multiple use classifications. The Proposed Action would classify public lands in the consolidation zones (191,000 acres) as Class L with the classification of retention zones remaining unchanged and disposal zones unclassified; (3) Land Use Categories—overflying DoD activities were not considered in the designation of private land under various land use categories. Private land in consolidation zones would be considered for Rural Conservation designation in the Proposed Action with retention zones considered for Rural Living and lands within the disposal zones remaining unchanged; and (4) Public Health and Safety—no safety overlay has been developed by San Bernardino County to address the impacts to surface uses from overflying DoD activities. A safety-noise overlay would be considered for private lands in both consolidation and retention zones for the Proposed Action.

Five alternatives are considered in addition to the Proposed Action, including the No Action Alternative. The EIS/EIR includes a discussion of the affected environment and the environmental consequences occurring as a result of the Proposed Action and each alternative.

Copies of the Draft EIS/EIR are available for review at the following locations:

California Desert District Office, 1695 Spruce Street, Riverside, California, 92507, (714) 351-6428
Barstow Resource Area Office, 150 Coolwater Lane, Barstow, California, 92311, (619) 256-3595;
Ridgecrest Resource Area Office, 112 East Dolphin Street, Ridgecrest, California, 93555, (619) 375-7125;
Kern County Libraries:
- 1315 Truxtun Ave., Bakersfield, California, 93301, (805) 862-3246; 9507 California City Blvd., California City, California, 93505, (619) 373-4757;
- 131 E. Los Flores, Ridgecrest, California, 93555, (619) 375-7666;

Los Angeles County Library, 1150 W. Avenue J, Lancaster, California, 93534, (805) 948-5029;
Los Angeles Public Library, 630 W. 5th St., Los Angeles, California, 90071, (714) 626-7461;
Palmdale Public Library, 700 E. Palmdale Blvd., Palmdale, California, 93550, (805) 273-2820;
Riverside Public Library, 3581 7th St., Riverside, California, 92501, (714) 787-7203;
San Bernardino County Libraries;
- 104 W. Fourth St., San Bernardino, California, 92401, (714) 383-1734;
- 11744 Bartlett, Adelanto, California, 92301, (61) 246-5661;
- 22051 Highway 18, Apple Valley, California, 92307, (619) 247-2022;
- 304 E. Buena Vista, Barstow, California, 92311, (619) 256-8481;
- 16170 Walnut, Hesperia, California, 92345, (619) 244-4898;
- 15011 Circle Dr., Victorville, California, 92392 (619) 245-4222;

San Bernardino Public Library, 401 Arrowhead Ave., San Bernardino, California, 92401, (714) 383-5277.

DATES: Written comments on the Draft EIS/EIR will be accepted through November 13, 1987 and should be sent to Barstow Area Manager, Bureau of Land Management, 150 Coolwater Lane, Barstow, California, 92311. Two public hearings have been scheduled:

September 22, 1987—Victorville, Holiday Inn Convention Center, Room A, 15494 Palmdale Road
September 23, 1987—Lancaster, Antelope Valley Inn, Sierra A Room, 44055 North Sierra Highway

FOR FURTHER INFORMATION CONTACT: Sue Richardson, Barstow Resource Area, 150 Coolwater Lane, Barstow, California 92311, (619) 256-3595.

Date: August 11, 1987.

Gerald E. Hillier,

District Manager.

[FR Doc. 87-18779 Filed 8-14-87; 8:45 am]

BILLING CODE 4310-40-M

INTERSTATE COMMERCE COMMISSION

[No. 40142]

Terminal Railway Alabama State Docks; Petition for Declaratory Order, Assessment and Collection of Demurrage Charges

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, on its own initiative, exempts petitioner's limited demurrage proposal from the discrimination, rebate and tariff violation provisions of 49 U.S.C. Subtitle IV.

DATES: This exemption is effective on September 16, 1987. Petitions to stay must be filed by August 27, 1987, and petitions for reconsideration must be filed by September 8, 1987.

ADDRESSES: Send pleadings referring to Docket No. 40142 to:.

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: E.G. Browning, Jr., Terminal Railway Alabama State Docks, P.O. Box 15888, Mobile, AL 36633.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: The Terminal Railway Alabama State Docks will bill demurrage charges directly to the Wharves and Warehouse Division of the Alabama State Docks Department when the Wharves Division is solely responsible for delays in releasing rail cars.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357, or TDD for hearing impaired: (202) 275-1721.

Decided: July 29, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners

Sterrett, Andre, and Simmons. Vice Chairman Lamboley dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87-18700 Filed 8-14-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30948 (Sub-No. 1)]

CSX Transportation, Inc., and Southern Railway Co., Construction and Operation Exemption; Atlanta, GA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts, *nunc pro tunc*, from the prior approval requirements of 49 U.S.C. 10901 the construction (1) by Southern Railway Company of approximately 800 feet of connecting track, and (2) by CSX Transportation, Inc., of approximately 200 feet of connecting track, both in the Jones Avenue area of Atlanta, GA.

DATES: This exemption will be effective on August 20, 1987. Petitions to reopen must be filed by September 8, 1987.

ADDRESSES: Send pleadings referring to Finance Docket No. 30948 (Sub-No. 1) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representatives:

Angelica D. Lloyd, Norfolk Southern Corporation, 204 South Jefferson Street, Roanoke, VA 24042

R. Lyle Key, Jr., CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357, or TDD for hearing impaired (202) 275-1721.

Decided: August 4, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Simmons concurred in the result.

Noreta R. McGee,

Secretary.

[FR Doc. 87-18698 Filed 8-14-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31066]

Maine Central Railroad Co. and Portland Terminal Co. Lease Exemption, Springfield Terminal Railway Co.; Exemption

Maine Central Railroad Company (MEC), Portland Terminal Company (PT), and Springfield Terminal Railway Company (ST) filed a notice of exemption for: (1) MEC to lease to ST the Freight Main Line between milepost 46.26 and milepost 6.5 in Portland, ME, a distance of approximately 40 miles; and (2) PT to lease to ST the Freight Main Line between MEC Milepost 6.5 in Portland and the connection with the Boston and Maine Corporation (B&M) line at B&M milepost 111.2 in South Portland, ME, including Rigby Yard and the Rigby Car Shops (excluding the Engine House at Rigby Yard), a distance of approximately 7 miles. MEC will retain the right to operate through trains over the Freight Main Line.

MEC, PT, and ST are wholly-owned subsidiaries of Guilford Transportation Industries, Inc. (GTI), which also owns B&M and the Delaware and Hudson Railway Company (D&H). As a result of the proposed transaction, it is intended that ST will provide service as good as, or better than, service now provided.

Since MEC, PT, and ST are members of the same corporate family, the lease falls within the class of transactions that are exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(3). The carriers anticipate that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in competitive balance with carriers operating outside the corporate family.

Any employee affected by the lease transaction would normally be protected by the labor conditions set forth in *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978), and 360 I.C.C. 653 (1980) (*Mendocino*). These conditions satisfy the statutory requirements of 49 U.S.C. 10505(g)(2) for lease transactions. However, in a decision in Finance Docket No. 30965, *Delaware and Hudson Railway Company—Lease and Trackage Rights Exemption—Springfield Terminal Railway Company, et al.* (not printed), served May 18, 1987, the Commission set for modified procedure a series of notices filed by the GTI carriers because labor interests raised issues related to the level of employee protection for the transactions. The Commission asked the parties to that proceeding to address several issues and present additional evidence, including similar existing and future notices and transactions, such as this one, involving the GTI carriers.

Since the May 18, 1987 decision, the Commission has published in the **Federal Register** two related notices of exemption (Finance Docket Nos. 31015 and 31023) by various GTI carriers and indicated that the underlying transactions will be considered in the Finance Docket No. 30965 proceeding. The Railroad Labor Executives' Association has filed a petition in this proceeding asking that this lease transaction also be consolidated with that proceeding. The Commission will issue a separate decision disposing of that request.

If, prior to the Commission's determination of the appropriate level of labor protection for these GTI transactions, MEC and PT consummate this transaction and provide employees with *Mendocino* protection, they do so at their own risk. Should the Commission subsequently determine that a higher level of protection is required, MEC and PT will be required to provide employees with that greater protection.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of petitions to revoke will not stay the transaction.

Decided: August 11, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-18699 Filed 8-14-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-No. 195)]

Chicago and North Western Transportation Co.; Issuance of Certificate and Decision Authorizing Abandonment of Rail Lines Between Iowa Falls and Owasa, IA

The Commission has issued a certificate and decision authorizing the Chicago and North Western Transportation Company to abandon its 7.2-mile rail line between Iowa Falls (milepost 19.5) and Owasa, IA (milespost 12.3), in Hardin County, IA. The abandonment certificate will become effective 30 days after this publication unless within 15 days after publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 CFR 1152.27.

Decided: August 11, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterett, Andre, and Simmons. Vice Chairman Lamboley dessented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87-18799 Filed 8-4-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application, Research Biochemicals Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 25, 1987, Research Biochemicals Incorporated, 9 Erie Drive, Natick, Massachusetts 01760, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
3, 4-Methylenedioxy amphetamine (7400)	I
3, 4-Methylenedioxymethamphetamine (MDMA) (7405).	I
Dimethyltryptamine (7435)	I
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100).	II
Methamphetamine, its salts, isomers, and salts of its isomers (1105).	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Benzoylecgonine (9190)	II
Metazocine (9240)	II
Morphine (9300)	II
Thebaine (9333)	II

Researcher Biochemicals Incorporated will produce small quantities of controlled substances to be used in research purposes only. They have never been registered as a bulk manufacturer of these controlled substances.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than (September 16, 1987).

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

Dated: August 11, 1987.

[FR Doc. 87-18657 Filed 8-14-87; 8:45am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration; Syncates Associates, Inc.

By Notice dated June 12, 1987, and published in the **Federal Register** on July 23, 1987 (52 FR 23613), Syncates Associates, Inc., 9307-M Harwin, Houston, Texas 77036, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Pentobarbital (2270), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Gene R. Haislip,

Deputy Assistant Administrtor, Office of Diversion Control, Drug Enforcement Administration.

Dated: August 11, 1987.

[FR Doc. 87-18656 Filed 8-14-87; 8:45 am]

BILLING CODE 4410-09-M

NUCLEAR REGULATORY COMMISSION

Extension of the Public Comment Period for NUREG-1150, "Reactor Risk Reference Document"

The U.S. Nuclear Regulatory Commission is extending the public comment period for NUREG-1150, "Reactor Risk Reference Document," an additional 41 days.

Draft NUREG-1150 was issued for public comment on 2 March 1987. The 150 day public comment period was to end on 21 August 1987. The public comment period now ends on Thursday, 1 October 1987.

Public comment should be sent to Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washigton, DC, 20555.

(5 U.S.C. 552(a))

Dated at Bethesda, Maryland this 11th day of August 1987.

For the U.S. Nuclear Regulatory Commission.

R. Wayne Houston,

Acting Director, Division of Reactor Accident Analysis, Office of Nuclear Regulatory Research.

[FR Doc. 87-18595 Filed 8-14-87; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or canceled since the last list of proposed meetings published July 20, 1987 (52 FR 27268). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. CRS full Committee meetings begin at 8:30 A.M. and Subcommittee meetings usually begin at 8:30 A.M. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, canceled, or rescheduled, or whether changes have been made in the agenda for the September 1987 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 202/634-3265, ATTN: Barbara Jo White) between 8:15 A.M. and 5:00 P.M., Eastern Time.

ACRS Subcommittee Meetings

Regional and I&E Programs, August 28, 1987, Walnut Creek, CA. The Subcommittee will review the activities under the control of the Region V Office.

Future LWR Designs, September 8, 1987 (1:00 P.M.), Washington, DC. The Subcommittee will discuss its reply to the 4/22/87 Staff Requirements Memorandum regarding the feasibility, benefit, and cost effectiveness of selected and combined systems as recommended in the ACRS letter of 1/15/87 on Improved LWRs.

Generic Items, September 16, 1987, Washington, DC. The Subcommittee will continue the discussion on the effectiveness of the programs that address generic issues and USIs. Also, it will discuss with selected licensees the contribution to plant safety resulting from the implementation of the resolved generic issues and USIs.

Extreme External Phenomena, September 17, 1987, Washington, DC. The Subcommittee will discuss the NRC Staff's Seismic Design Margins Programs and the application of the methodology to Maine Yankee.

Auxiliary Systems, September 30, 1987, Washington, DC. The Subcommittee will discuss the following: (1) Heating, ventilating, and air conditioning (HVAC) system malfunctions and their impact on safety systems, (2) problems associated with instrument air systems, AEOD findings on instrument air system malfunctions and its recommendations to alleviate this problem, and (3) criteria used by the utilities to design chilled water systems, associated regulatory requirements, and the criteria being used by the NRC Staff to review the chilled water systems design.

TVA Organizational Issues, October 1, 1987, Washington, DC. The Subcommittee will review the safety issues associated with TVA management reorganization and the Sequoyah restart.

Systematic Assessment of Operating Experience, October 7, 1987, Washington, DC. The Subcommittee will discuss AEOD's assessment of the implications of selected operating events, the method of operation, and influence of AEOD.

Joint Waste Managment and Quality and Quality Assurance, October 14–16, 1987, Washington, DC. The Subcommittees will review QA Experience in Readiness Reviews as applied to nuclear power plants, NLW geologic repositories, and monitored retrievable storage (MRS) facilities. They will also review various pertinent waste management topics.

Decay Heat Removal Systems, Date to be determined (September), Washington, DC. The Subcommittee will continue its review of the NRR Resolution Position for USI A–45.

Thermal Hydraulic Phenomena, Date to be determined (September/October), Washington, DC. The Subcommittee will review: (1) The final version of revised ECCS Rule, and (2) the status of the NRC–RES thermal hydraulic research Program.

Standardization of Nuclear Facilities, Date to be determined (October), Washington, DC. The Subcommittee will review the Staff SER and Chapter I of the EPRI Requirements Document. Chapter II may also be discussed.

Severe Accidents, Date to be determined (October) (tentative), Washington, DC. The Subcommittee will review the final version of the NRC Staff's proposed generic letter on Individual Plant Examinations (IPEs).

Containment Requirements, Date to be determined (October/November), Washington, DC. The Subcommittee will review the hydrogen control measures for BWRs and Ice Condenser PWRs (USI A–48). May also involve EPGs for BWRs.

Babcock & Wilcox Reactor Plants, Date to be determined (October/November), Washington, DC. The Subcommittee will continue its review of the long-term safety review of B&W reactors. This effort was begun during the summer of 1986; initial Committee comments offered on July 16, 1986 in a letter to V. Stello, EDO.

Metal Components, Date to be determined (October/November), Charlotte, NC. The Subcommittee will review the status of the NDE of cast stainless steel piping.

Containment Requirements, Date to be determined (November/December), Washington, DC. The Subcommittee will review the proposed Containment Performance/Improvement Program Plan. The Plan is in three parts: (1) Improved Plant Operations including EOPs, (2) Severe Accident vulnerabilities via IPEs and (3) containment performance in the event of a severe accident.

Diablo Canyon, Date to be determined (late November/early December), Location to be determined. The Subcommittee will review the status of the Diablo Canyon Long-Term Seismic Program.

Structural Engineering, Date to be determined (late November or January 1988), Albuquerque, NM. The Subcommittee will review the results of the model concrete containment test.

Containment Requirements, Date to be determined (April, 1988), Washington, DC. The Subcommittee will review the NRC Staff's document on containment performance and improvements (all containment types).

Joint Seabrook/Occupational & Environmental Protection Systems/Severe Accidents, Date to be determined, Washington, DC. The Subcommittees will review Seabrook Emergency Planning and other related matters.

Seabrook Unit 1, Date to be determined, Washington, DC. The Subcommittee will review the application for a full power operating license for Seabrook Unit 1.

ACRS Full Committee Meeting

September 10–12, 1987: Items are *tentatively* scheduled.

*A. *Storage of Spent Nuclear Power Plant Fuel (Open)*—Review proposed revision of 10 CFR Part 72—Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Installation (ISFSI) to provide for a Monitored Retrievable Storage facility.

*B. *Emergency Core Cooling Systems (Open)*—Review proposed changes in 10 CFR 50.54 regarding development and use of uncertainty methodology in best-estimate analytical models.

*C. *Resolution of Generic Issues (Open)*—Status reports and discussion of proposed resolution of GI 23, Reactor Coolant Pump Seal Failure, GI 93, Steam Binding of Auxiliary Feedwater Pumps, and GI 124, Auxiliary Feedwater System Reliability.

*D. *Seismic Qualification of Nuclear Power Plant Components (Open)*—Briefing by NRC Staff and the Seismic Qualification Utilities Group (SQUG) regarding results of seismic walk-through of the Zion Nuclear Power Station.

*E. *Improved Safety Features for Future LWRs (Open/Closed)*—Discuss proposed ACRS response to inquiry regarding the cost effectiveness, feasibility, and benefit of systems noted in the ACRS report of January 15, 1987.

*F. *Advanced Reactor Design (Open)*—Briefing regarding status of NRC staff review of DOE advanced reactor designs.

*G. *Zion Nuclear Station (Open)*—Briefing regarding full-field exercise conducted at the Zion Station.

*H. *Meeting with Director, NRR (Open)*—Discuss topics of mutual interest.

*I. *Emergency Planning (Open)*—Discuss proposed ACRS recommendations/comments regarding emergency planning in the vicinity of nuclear power plants.

*J. *Foreign Regulatory Policies and Practices (Open/Closed)*—Briefing and discussion of regulatory policies and practices in Italy.

*K. *Trojan Nuclear Station (Open)*—Briefing and discussion of excessive feedwater pipe thinning which occurred at this nuclear plant.

*L. *Unresolved Safety Issue A-44, Station Blackout (Open)*—Briefing and discussion of proposed NRC staff implementation of recommendations in the ACRS report of June 9, 1987 and status of NUMARC activities regarding this subject.

*M. *Implication of Chernobyl Nuclear Accident (Open)*—Discussion of proposed NRC staff implementation of ACRS recommendations in its report of January 15, 1987.

*N. *Appointment of New ACRS Members (Closed)*—Discuss qualifications of candidates proposed for consideration as nominees for appointment to the ACRS.

*O. *Future Activities (Open)*—Discuss anticipated ACRS subcommittee activity and items proposed for consideration by the full Committee.

*P. *Radioactive Waste Management and Disposal (Open)*—Report and review of matters related to the management and disposal of nuclear radwaste, including HLW, LLW, and related safety research.

*Q. *ACRS Subcommittee Activities (Open/Closed)*—Hear and discuss reports of ACRS Subcommittees regarding the status of assigned activities related to nuclear power plant safety and regulation, nuclear radwaste management, and regulatory practices and procedures.

October 8–10, 1987—Agenda to be announced.

November 5–7, 1987—Agenda to be announced.

Date: August 11, 1987.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 87-18761 Filed 8-14-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-29510, License No. 34-00811-03, (Superseded by No. 34-00811-04) EA 87-31]

Order Imposing Civil Monetary Penalty; LTV Steel Company, Inc.

I

LTV Steel Company, Inc., P.O. Box 6778 Cleveland, OH 44101, is the holder of License No. 34-00811-04 issued by the Nuclear Regulatory Commission on November 17, 1986. This license superseded License No. 34-00811-03 which terminated on November 17, 1986, and was the license in effect at the time the violations occurred. The old license authorized the licensee to possess and use licensed material in the form of sealed sources in certain density and level gauges in accordance with the conditions specified therein.

II

A special inspection of the licensee's activities was conducted on January 20–22, 1987. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated April 8, 1987. The Notice states the nature of the violations, the provisions of the NRC requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated May 1, 1987.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing, and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, It Is Hereby Ordered That:

The licensee pay a civil penalty in the amount of two thousands dollars ($2,000.00) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region III.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in section II above, and

(b) Whether, on the basis of such violation, this Order should be sustained.

For The Nuclear Regulatory Commission.

Dated at Bethesda, Maryland this 10th day of August 1987.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Appendix—Evaluations and Conclusions

On April 8, 1987, a Notice of Violation and Proposed Imposition of Civil Penalty (NOV) was issued for violations identified during an NRC inspection. LTV Steel Company, Inc. responded to the Notice on May 1, 1987. The licensee protests the Notice on two points. While the licensee does not deny that the sources are lost, it believes the two cobalt sources were stored in restricted areas, which is in conflict with the Notice. The licensee also believes the violations should be cited against the license under which the sources were possessed, not the current license which superseded it. The NRC's evaluation and conclusion regarding the licensee's arguments are as follows:

I. Restatement of Violations

A. 10 CFR 20.207(b) requires that licensed materials in an unrestricted area and not in storage be tended under the constant surveillance and immediate control of the licensee.

Contrary to the above, on November 6, 1986, it was determined that five radioactive sources, which had been in storage in an unrestricted area, were removed and not maintained under constant surveillance or the immediate control of the licensee and thus were lost. The sources included a 13.7 millicurie americium-241 source, two sources containing 4.7 millicuries and cobalt-60, and two sources containing 0.3 microcuries and 12.7 microcuries of thallium-204.

B. License Condition No. 19 of the license dated August 20, 1984, states that the licensee shall conduct a physical inventory every six months to account for all sealed sources received and possessed under the license.

Contrary to the above, from December 19, 1984 (formation of LTV Steel) until November 6, 1986, it was determined that the licensee failed to conduct a physical inventory every six months to account for all sealed sources in storage.

Collectively, these violations have been classified as a Severity Level III problem (Supplements IV and VI).

Cumulative Civil Penalty—$2,000—assessed equally between the violations.

Summary of Licensee's Response

The licensee believes the License Number cited in the Notice is incorrect and should be changed from No. 34–00811–04 to 34–00811–03. License No. 34–00811–03, which terminated on November 17, 1986, prior to the NRC inspection, was the license under which the sources were reported missing. If the NRC changes the license number cited in the Notice, the licensee agrees, in substance, with Violation A since the licensee also believes there was a question concerning unrestricted access to three of the five sources. However, the licensee believes that the two cobalt–60 sources were properly secured in a restricted manner and would not constitute a violation. Although the licensee believes that three of the five sealed sources could have been better protected had access to the safe in which they were stored been more restricted, it does not believe that the loss of the two cobalt–60 sources can be attributed to poor access control.

In response to Violation B, the licensee agrees that physical inventories were not performed of stored, sealed sources at the Research Center at the prescribed six month intervals as required. The licensee states that the violation occurred because practices at the Research Center were not as described in the license and that an amendment change should have been requested to accurately describe the practice instituted by the licensee.

II. The licensee has also addressed the five factors regarding adjustment of the base civil penalty, as follows:

Prompt Identification and Reporting

NRC Region III was immediately notified by LTV Steel by telephone on the same day the sources were first discovered to be missing, November 6, 1986. The licensee also described the lost sources event in a December 5, 1986, report which was sent to the NRC.

Corrective Action to Prevent Recurrence

The licensee describes a new radiation protection program which was developed in response to a NRC request to update the license to reflect current practices at LTV Steel Company. These activities were in progress prior to the discovery of the missing sources. The major corrective actions taken since the discovery of the lost sources are: (1) Sources no longer vital to the steelmaking process will be properly transferred and disposed; (2) sources maintained in secured storage areas will be under strict access control; and (3) sources and source devices will be inventoried every six months.

Past Performance

In addressing this factor, the licensee describes the measures taken by LTV Steel to substantially upgrade the radiation protection program. This included transfer and disposal of excess radioactive sources and a forty hour radiation safety officer training seminar.

Prior Notice of Similar Events

The licensee states that NRC inspections did not identify concerns in the area of physical inventories by the licensee prior to the January 20–22,1987, inspection. The storage areas also were not identified as unrestricted areas by NRC inspectors. If such concerns had been indentified, the licensee states that such concerns would have been promptly corrected.

Multiple Occurrences

The licensee states that it was unaware of the existence of a violation for storing sources in an unrestricted area and was not aware of a condition resulting in a continuing violation for failure to conduct a physical inventory of sealed sources in storage.

NRC Evaluation of Licensee's Arguments For Mitigation

The NRC staff agrees with the licensee's observation that the violations occurred under the conditions of License No. 34–0081–03. The conditions of License No. 34–00811–03 were superseded by License No. 34–00811–04.

The licensee maintains that the loss of the two cobalt–60 sources does not constitute a violation as stated in the Notice since the sources were in a restricted area. The NRC conclusion was based on the licensee interviews contained in its December 5, 1986, report to the NRC. The interview of Mr. J. F. Perko, formerly Chief Project Engineer of the Nucleonics Division of Republic Steel, stated that the cobalt–60 were placed in storage in 1970. He stated that the safe in which the cobalt items were placed had a chain and lock around it. However, he stated that anyone at the Research Center may have had a key to it. The NRC staff does not believe that an area to which such access is possible constitutes a restricted area. This position is consistent with the NRC's position regarding material stored in the safe in the Main Research Center where at least ten people had access to the combination. The licensee agreed that access to the Main Research Center safe was not restricted as required.

The licensee agreed that Violation B occurred as stated in the Notice. The violation involved the licensee's failure to physically inventory radioactive sources in storage every six months.

In requesting mitigation or remission of the proposed civil penalty, the licensee has addressed the factors listed in Section V.B. 10 CFR Part 2, Appendix C (1986). The NRC staff evaluation of the licensee's statements are provided below:

Prompt Identification and Reporting

The licensee contracted for transfer and disposal activities from June 1986 until September 26, 1986. On November 6, 1986, the licensee was informed by the contractor, Texas Nuclear Corporation, that five sources were unaccountable. Once this information was presented to the licensee, the NRC was informed. The NRC staff believes this event to be self-disclosing. Mitigation under this factor is usually given to licensees who have a strong program with good audit capabilities. Although the licensee's audit program (physical inventory) had opportunity to identify the violation, the licensee's failure to physically inventory sources prevented the licensee from identifying the missing sources earlier.

Corrective Action to Prevent Recurrence

The NRC staff acknowledges the licensee's corrective actions and believes that adherence to these practices should prevent recurrence. However, the NRC staff does not believe the corrective actions were unusually prompt or so extensive as to warrant mitigation. NRC expects that sources in storage will be under strict access controls and that physical inventories will be performed as required (six month frequency).

Past Performance

The results of the inspection show that access to safes where radioactive sources were stored was not adequately controlled and physical inventories to identify discrepancies were not conducted. These violations appear to have existed for a considerable period of time. The licensee's performance over this period of time does not warrant mitigation of the penalty.

Prior Notice of Similar Events

The NRC agrees that the licensee did not have prior notice of any similar

events. Had the licensee known of previous events or been informed that violations may have existed and not taken corrective action, escalation for this factor would have been appropriate. Absent this, no adjustment to the base civil penalty occurred due to prior notice.

Multiple Occurrences

The licensee agrees that it was unaware of the continuing violations in this area. Had the licensee been aware of these problems and failed to correct the violations, escalation for prior notice of similar events would have been appropriate. Because of weaknesses in the licensee's program. violations were not identified for a period of at least eighteen months and the violations contineued until the licensee was infomred by its contractor that the sources could not be located.

NRC Conclusion

Neither an adequate basis for a reduction of the severity level nor for mitigation of the civil penalty was provided by the licensee. Consequently, the proposed Civil Penalty in the amount of $2,000.00 should be imposed.

[FR Doc. 87-18727 Filed 8-14-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-443-OL 50-444-OL (ASLBP No. 82-471-02-OL) (Offsite Emergency Planning)]

Atomic Safety and Licensing Board;, Hearing; Public Service Co. of New Hampshire et al. (Seabrook Station, Units 1 and 2)

Before Administrative Judges: Helen F. Hoyt, Chairperson Gustave A. Linenberger, Jr., Dr. Jerry Harbour

August 10, 1987.

Seabrook hearings are now scheduled to be held in the New Hampshire Statehouse Hall of Representatives at Concord, New Hampshire on the following dates:

September 28–October 2, 1987–9:00 a.m.–5:00 p.m.
October 5–October 9, 1987–9:00 a.m.–5:00 p.m.
October 19–October 23, 1987–9:00 a.m.–5:00 p.m.
November 2–November 6, 1987–9:00 a.m.–5:00 p.m.
November 16–November 20, 1987–9:00 a.m.–5:00 p.m.

For the Atomic Safety and Licensing Board.

Helen F. Hoyt,

Chairperson, Administrative Judge.

[FR Doc. 87-18760 Filed 8-14-87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Wednesday, September 2, 1987
Wednesday, September 9, 1987
Wednesday, September 16, 1987
Wednesday, September 23, 1987
Wednesday, September 30, 1987

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under Subchapter IV, Chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committtee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 632-9710.

Thomas E. Anfinson,

Chairman, Federal Prevailing Rate Advisory Committee.

August 11, 1987.

[FR Doc. 87-18707 Filed 8-14-87; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Application for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange

August 11, 1987.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

GCA Corporation (New), Common Stock, $.01 Par Value (File No. 7-0342)
Nortek, Inc. (Delaware), Common Stock, $1 Par Value (File No. 7-0343)
Raychem Corporation (Delaware), Common Stock, $1 Par Value (File No. 7-0344)

These securities are registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 2, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such applications is consistent with the

maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan Katz,

Secretary.

[FR Doc. 87-18696 Filed 8-14-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24791; File No. SR-MBS-87-8]

Self-Regulatory Organizations; Proposed Rule Change by MBS Clearing Corporation Relating to Physical Withdrawal of Securities Eligible ("Eligible Securities") for Deposit in MBSCC's Depository Division; Filing and Immediate Effectiveness

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 5, 1987 the MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is the MBS Clearing Corporation's (MBSCC) procedures regarding the physical withdrawal of securities eligible ("Eligible Securities") for deposit in MBSCC's Depository Division.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change clarifies and sets forth MBSCC's policy regarding the physical withdrawal of Eligible Securities. The polic~~ covers Eligible Securities subject to the Public Securities Association's ("PSA") Good Delivery Guideline for securities issued by the Government National Mortgage Association ("GNMA"), as adopted on December 29, 1986, as well as those not subject to PSA's guideline. The PSA guideline was announced together with a schedule by GNMA and PSA for the conversion of GNMA securities into book-entry form.

The policy substantially limits, but does not altogether prohibit, the withdrawal of securities subject to PSA's Good Delivery Guideline. Securities not subject to the guideline may be withdrawn by MBSCC Participants and registered in the name of the Participant or the name of a customer of the Participant. Securities subject to the guideline may be withdrawn and registered in a Participant's name only if the Participant is legally required to maintain physical possession of the securities. Participants may otherwise request physical withdrawal of securities on behalf of a customer only if the customer is legally required to maintain physical possession of the securities or the customer, to the best of the Participant's knowledge, does not intend to trade or deliver the withdrawn securities.

At the present time, GNMA securities with the following coupon rates have been converted to book-entry form and are subject to the PSA guideline: 5.50%-7.49%, 16.00%-17.50%, 14.00%-15.99%, and 13.00%-13.99%. On April 27, 1987, PSA and MBSCC modified the conversion schedule of GNMA securities. For additional coupons, notice will be given of coupons to be designated as specified for book-entry settlement 45 days in advance of the issuance date of new pools of coupons.

In response to concerns raised by various commentators, MBSCC has further revised the withdrawal policy to make it clear that a Participant may make a request to withdraw securities subject to the PSA Good Delivery Guideline if it is legally required to maintain, as well as obtain, physical possession of securities. The phrase "legally required to obtain or maintain physical possession" is expanded to include those legal requirements imposed by any rule or regulation of any governmental agency, self-regulatory organization or designated contract market as defined in the Commodity Exchange Act. In addition, the policy has been revised to enable the Participant, or its customer, to obtain securities in time to comply with such legal requirements.

Consistent with PSA's Good Delivery Guideline, the policy essentially ensures that securities subject thereto will be cleared and settled in book-entry form through a registered clearing agency. The policy is designed to reduce physical withdrawal requests for book-entry eligible securities subject to the guideline and encourage the centralized processing of mortgage-backed securities transactions. By placing reasonable restrictions on the physical withdrawal of mortgage-backed securities subject to the PSA guideline, the proposed rule change will both foster PSA's mandate for book-entry settlement of certain transactions and significantly reduce delays, unmatched transaction orders and other human errors often associated with the physical delivery and transfer of certificates. The text of the withdrawal policy is attached as Exhibit A.

The proposed rule change is consistent with section 17A of the Securities Exchange Act of 1934 in that it encourages the processing and facilitation of securities clearance and settlement of mortgage-backed securities, thereby reducing current inefficient procedures and costs to issuers and investors of mortgaged-backed securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that any burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

While writen comments have not been generally solicited, MBSCC has submited responses to comments submitted to the Commission. In response to certain concerns raised by the Chicago Board of Trade regarding the obtaining of GNMA certificates for collateral purposes relating to Collateralized Depository Receipts, MBSCC has made revisions to the proposed rule change discussed in Item 3(a) above.

In a separate rule filing to MBSCC's Depository Division rules (SR-MBS-87-7, submitted July 24, 1987), MBSCC has responded to concerns raised by some commentators regarding the submission of claims under a GNMA or other similar guarantee on behalf of Participants. The Depository Division rules have been amended to make clear that MBSCC, in filing claims for payment under any guarantee, will be acting solely as agent for its

Participants, except in certain circumstances, where MBSCC or a third-party leader have made principal and interest advances.

Representatives of PSA and GNMA have had the opportunity to review the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW. Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the propose rule change that ae filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC Copies of such filing will also be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR-MBS-87-8 and should be submitted by September 8, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegate authority.

Dated: August 11, 1987.

Jonathan G. Katz,

Secretary.

Exhibit A—MBSCC Procedure For Physical Withdrawal of Depository Eligible Securities

The following is MBSCC's Procedure for physical withdrawal of securities from the MBSCC Depository. The Procedure covers securities that are *not* yet subject to PSA's Good Delivery Guideline, as adopted by PSA on December 29, 1986, *as well as those* subject to the Guideline. This Procedure limits almost in its entirety the withdrawal of securities that are subject to PSA's Good Delivery Guideline. This is consistent with PSA's and GNMA's intent to move vigorously to a book-entry settlement environment for GNMA securities.

Securities Not Yet Subject to Good Delivery Guideline

In the case of securities not yet subject to the Good Delivery Guideline, a Participant will be permitted to withdraw Securities held by the Depository upon the Participant's submission of a request on the form prescribed by MBSCC. The Participant must specify whether the securities should be registered in the name of the Participant or the name of a customer of the Participant. Assuming that the request is made within the appropriate cut-off times prescribed by MBSCC, securities will be processed within four-to-twelve hours of such request.

Securities Subject to Good Delivery Guideline

MBSCC will honor requests to withdraw securities subject to the PSA Good Delivery Guideline in a Participant's name only in the unlikely event that the Participant is legally required to obtain or maintain physical possession of securities. Other Participants may submit requests for withdrawal of securities only if they request that the securities be registered in the name of a customer who is legally required to obtain or maintain physical possession of the securities or who, to the best of the Participant's knowledge, does not intend to trade, or deliver for financing purposes, the securities withdrawn. For purposes hereof, a Participant or its customer will be deemed legally required to obtain or maintain physical possession of securities if obligated to do so under any applicable law or any rule or regulation of any governmental agency, any self-regulatory organization as defined in the Securities Exchange Act of 1934, or any designated contract market as defined in the Commodity Exchange Act (including, in the case of a self-regulatory organization or designated contract market which is a Participant in the Depository, the rules or regulations of such self-regulatory organization or designated contract market).

Assuming a request for withdrawal satisfies the foregoing guidelines and is made within the appropriate cut-off times and on forms prescribed by MBSCC, MBSCC will make the securities available (a) seven calendar days from the date of withdrawal request, or (b) on such earlier date as the Participant requesting the withdrawal certifies to MBSCC is necessary to enable the Participant or its customer to comply with any applicable legal requirement. Participants should advise their customers that payment will be required on settlement date, even though the physical security may be received sometime thereafter.

By making a request for the withdrawal of securities, a MBSCC Depository Participant represents to the Depository that the withdrawal will satisfy the foregoing guidelines. Abuse of this policy will subject the offending Participant's continued participation in the Depository to review by the MBS Clearing Corporation Board of Directors.

[FR Doc. 87-18743 Filed 8-14-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of action subject to intergovernment review under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund ten presently existent Small Business Development Centers (SBDCs) on September 30, 1987. Currently, there are 49 SBDCs operating in the SBDC program. The following SBDCs are intended to be refunded: Delaware; Iowa; Kentucky; Louisiana; Massachusetts; Michigan; Missouri; Texas (at Houston); Vermont; and Wyoming. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the SBDCs to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through September 16, 1987.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business

Administration, 1441 L Street, NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application of two presently existent Small Business Development Centers (SBDCs) for refunding. Also, published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published one and one half months in advance of the expected date of refunding of these SBDCs instead of the usual 60 days due to inadvertent administrative delays. Relevant information identifying these SBDCs and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to each affected State single point of contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. The SBDC proposal cannot be inconsistent with any area-wide plan providing assistance to small business, if there is one, which has been adopted by an agency recognized by the State government as authorized to do so. Copies of such written comments should also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 30 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 30-day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDCs are authorized under section 21 of the Small Business Act (15 U.S.C. 648). SBDCs operate pursuant to the provisions of section 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDCs operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDCs focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDCs act in an advocacy role to promote local small business interests. SBDCs concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDCs coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDCs are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SDBC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDCs must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDCs provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDCs emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: Management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agri-business, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association), exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDCs should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDCs should also emphasize

training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas are provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform, but not be limited to, the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDCs shall operate on a 40-hour week basis, or during normal State business hours of the host institution, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

Date: August 11, 1987.

James Abdnor,

Adminsitrator

Addresses of Relevant SBDC Directors

Mr. David Park, Delaware SBDC State Director, University of Delaware, Suite 005—Purnell Hall, Newark, DE 19711, (302) 451–2747

Mr. Jerry Owen, Kentucky SBDC State Director, University of Kentucky, 18 Porter Building, Lexington, KY 40506–0205, (606) 257–1751

Mr. John Ciccarelli, Massachusetts SBDC State Director, University of Massachusetts, School of Management, Amherst, MA 01003, (413) 549–4930—Ext. 303

Mr. Fred O. Hale, Missouri SBDC State Director, St. Louis University, 3674 Lindell Boulevard, St. Louis, MO 63108, (314) 534–7204

Mr. Norris Elliott, Vermont SBDC State Director, University of Vermont, Extension Service, Morrill Hall, Burlington, VT 05405, (802) 656–4479

Mr. Ronald Manning, Iowa SBDC State Director, Iowa State University, College of Business Administration, 137 Lynn Avenue, Amas, IA 50010, (515) 292–6351

Dr. John Baker, Louisiana SBDC State Director, Northeast Louisiana University, Administrative Bldg.—Room 2–57, University Drive, Monroe, LA 71209, (318) 342–2464

Dr. Norman Schlafmann, Michigan SBDC State Director, Wayne State University, 2727 Second Avenue, Detroit, MI 48201, (313) 577–4848

Dr. Jon Goodman, Houston SBDC State Director, University of Houston, College of Business Administration, 4800 Calhoun, Houston, TX 77004, (713) 749–4236

Mr. Mac Bryant, Wyoming SBDC State Director, Casper Community College, 130 North Ash, Suite A, Casper, WY 82601, (307) 235–4825

[FR Doc. 87–18649 Filed 8–14–87; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2287]

Declaration of Disaster Loan Area; California

Pebble Beach, California, constitutes a disaster loan area because of damage from a fire which occurred on May 31, 1987. Applications for loans for physical damage may be filed until the close of business on October 9, 1987, and for economic injury until the close of business on May 10, 1988, at the address listed below:

Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, P.O. Box 13795, Sacramento, California 95853

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable	9.500

The number assigned to this disaster is 228705 for physical damage and for economic injury the number is 654200.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: August 10, 1987.

James Abdnor,

Administrator.

[FR Doc. 87–18650 Filed 8–14–87; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2286]

Declaration of Disaster Loan Area; Minnesota

As a result of the President's major disaster declaration on August 6, 1987, I find that Dakota and Hennepin Counties

and the adjacent Counties of Carver, Ramsey, Scott and Washington in the State of Minnesota constitute a disaster loan area because of damage from severe storms, tornadoes and flooding which occurred on or about July 20, 1987. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on October 5, 1987, and for economic injury until the close of buisness on May 6, 1988, at:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, Georgia 30308

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	9.500

The number assigned to this disaster is 228606 for physical damage and for economic injury the number is 654100.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Date: August 7, 1987.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance

[FR Doc. 87-18651 Filed 8-14-87; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/10-0150]

Capital Marketing Corp.; Application for Approval of Conflict of Interest Transaction between Associates

Notice is hereby given that Capital Marketing Corporation (CMC), 100 Nat Gibbs Drive, Keller, Texas 76248, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application with the Small Business Administration (SBA) pursuant to Section 107.903 of the Regulations governing small business investment companies (13 CFR 107.903 (1987)) for approval of a conflict of interest transaction.

CMC proposes to sell assets which it repossessed from former borrowers, to Mr. Bob Burrus who will assume total indebtedness of $866,533 to CMC.

The conflict of interest arises because Mr. Burrus is a Director of Affiliated Food Stores, Inc., (Affiliated). Affiliated is an associate of CMC. As a result, CMC's financing of Mr. Burrus falls within the purview of § 107.903(b)(1) of the SBA Regulations and requires prior written approval of SBA.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC. 20416.

A copy of this notice will be published in a newspaper of general circulation in the Keller, Texas area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 7, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87-18652 Filed 8-14-87; 8:45 am]

BILLING CODE 8025-01-M

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of Action subject to intergovernmental review under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund eleven presently existent Small Business Development Centers (SBDCs) on October 1, 1987. Currently, there are 49 SBDCs operating in the SBDC program. The following SBDCs are intended to be refunded, subject to the availability of funds: Alabama; Alaska; Connecticut; Mississippi; New York (Downstate); New York (Upstate); Ohio; Puerto Rico; Texas (at San Antonio); St Thomas; and West Virginia. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the SBDCs to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other interested States and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through September 16, 1987.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Assistance Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application of two presently existent Small Business Development Centers (SBDCs) for refunding. Also, published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published one and one half months in advance of the expected date of refunding of these SBDCs instead of the usual 60 days due to inadvertent administrative delays. Relevant information identifying these SBDCs and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to each affected State single point of

contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. The SBDC proposal cannot be inconsistent with any area-wide plan providing assistance to small business, if there is one, which has been adopted by an agency recognized by the State government as authorized to do so. Copies of such written comments should also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street NW., Washington, DC 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 30 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 30-day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDCs are authorized under section 21 of the Small Business Act (14 U.S.C. 648). SBDCs operate pursuant to the provisions of section 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDCs operate on the basis of a State plan which provide small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDCs focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDCs act in an advocacy role to promote local small business interests. SBDCs concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDCs coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives:

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDCs are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDCs must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDCs provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDCs emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agribusiness, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDCs should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDCs should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas are provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform, but not be limited to, the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not

presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDCs shall operate on a 40-hour week basis, or during normal State business hours of the host institution, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

Date: August 11, 1987.

James Abdnor,

Administrator.

Addresses of Relevant SBDC Directors

Dr. Jeff Gibbs, Alabama SBDC State Director, University of Alabama in Birmingham, 1717 11th Avenue South, Suite 419, Birmingham, AL 35294, (205) 934–7260

Dr. John P. O'Connor, Connecticut SBDC State Director, University of Connecticut, Box U–41, 368 Fairfield Road, Storrs, CT 06268, (203) 486–4135

Mr. James King, Downstate New York SBDC Director, State University of New York, SUNY Downstate, Central Administration, State University Plaza, Albany, NY 12246, (518) 443–5398

Mr. Jack Brown, Ohio SBDC State Director, Ohio Department of Development, 30 East Broad Street, P.O. Box 1001, Columbus, OH 43266–1001, (614) 466–4945

Dr. Rodolfo Ramirez, San Antonio Region SBDC Director, University of Texas at San Antonio, Center for Economic Development, Hemisphere Plaza Building, #448, San Antonio, TX 78205, (512) 224–1945

Ms. Eloise Jack, West Virginia SBDC State Director, Governor's Office of Community and Industrial Development, 1115 Virginia Street, East, Charleston, WV 25310, (304) 348–2960

Ms. Janet Nye, Alaska SBDC State Director, Anchorage Community College, 430 West 7th Avenue, Suite 115, Anchorage, AK 99504, (907) 274–7232

Dr. Robert D. Smith, Mississippi SBDC State Director, University of Mississippi, 3825 Ridgewood Road, Jackson, MI 39211, (601) 982–6760

Mr. James King, Upstate New York SBDC Director, State University of New York, SUNY Upstate, SUNY Central, State University Plaza, Albany, NY 12246, (518) 443–5398

Mr. Jose M. Romaguera, Puerto Rico SBDC Director, University of Puerto Rico, P.O. Box 5253, Mayaguez, PR 00708, (809) 834–3590

Dr. Solomon S. Kabuka, Jr., Virgin Islands SBDC Director, College of the Virgin Islands, Box 1087, Charlotte Amalie, St. Thomas, VI 00801, (809) 776–3206

[FR Doc. 87–18647 Filed 8–14–87; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed During the Week Ending August 7, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate case a final order without further proceedings.

Docket No. 45065

Date Filed: August 5, 1987.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 2, 1987.

Description: Application of KSR Airlines, Inc. pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations, requests permanent authority to engage in foreign scheduled air transportation of passengers, property, and mail between point or points in the United States, on the one hand, and point or points outside of the United States, on the other hand.

Docket No. 45066

Date Filed: August 5, 1987.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 2, 1987.

Descripion: Application of KSR Airlines, Inc. pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations, requests permanent authority to engage in interstate and overseas scheduled air transportation of passengers, property, and mail as follows: Between a point in any State in the United States, or the District of Columbia, or any Territory or Possession of the United States and any other point in any State of the United States or the District of Columbia, or any Territory or Possession of the United States.

Phyllis T. Kaylot,

Chief, Documentary Services Division.

[FR Doc. 87–18705 Filed 8–14–87; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[CGD 87–056]

New York Harbor Traffic Management Advisory Committee; Renewal

AGENCY: Coast Guard, DOT.

ACTION: Notice of renewal.

SUMMARY: The Secretary of Transportation has approved the renewal of the New York Harbor Traffic Management Advisory Committee. The purpose of this Committee is to advise the Coast Guard on matters relating to maritime traffic management and safety in the New York Harbor area.

FOR FURTHER INFORMATION CONTACT: Commander W. Young, USCG, Executive Secretary, New York Harbor Traffic Management Advisory Committee, New York Vessel Traffic Service, Governors Island, New York 10004, Phone (212) 668–7954.

This notice is issued under authority of the Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C. App.1.

Dated: August 12, 1987.

M.E. Gilbert,

Rear Admiral, U.S. Coast Guard, Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 87–18721 Filed 8–14–87; 8:45 am]

BILLING CODE 491–14–M

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance; Union Pacific Railroad Co.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA)

has received a request for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST–84–21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before October 2, 1987, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petition seeking an exemption or waiver of compliance is as follows:

Union Pacific Railroad Company

Waiver Petition Docket Number LI–87–7

The Union Pacific Company (UP) request a waiver of compliance with certain provisions of the Railroad Locomotive Safety Standards (49 CFR Part 229). The UP seeks a waiver of compliance with § 229.123 of the regulation for four locomotives (4206, 4207, 4214 and 4215) assigned to hump yard operations at Forth Worth, Texas. The pilots of these locomotives hit the rail near the point where level track joins the inclined hump track, bending the pilot sheets. The railroad is requesting that it be allowed to raise the end pilots to 8/¾ inches above the top of the rail instead of the allowable maximum 6 inches to achieve sufficient clearance and avoid damage to the locomotive pilots.

Issued in Washington, DC on August 11, 1987.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 87–18769 Filed 8–14–87; 8:45 am]

BILLING CODE 4910-06-M

Maritime Administration

[Docket S–812]

Application To Amend Contract MA/MSB-417 To Provide Service Between Hawaii and Foreign Ports; American President Lines, Ltd.

Notice is hereby given that American President Lines, Ltd. (APL), by letter application of July 30, 1987, amended August 3, 1987, has requested amendment of its subsidized service description as set forth in Appendix A of APL's Operating-Differential Subsidy Agreement, Contract MA/MSB–417, so as to permit carryings of cargo in U.S. foreign commerce between Hawaii and foreign ports on Lines A and B, including extension areas, on up to 54 sailings per annum.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such application and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington DC 20590. Comments must be received no later than 5:00 p.m. on August 28; 1987. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)).

By Order of the Maritime Subsidy Board.

Date: August 12, 1987.

James E. Saari,

Secretary.

[FR Doc. 87–18728 Filed 8–14–87; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 11, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0155
Form Number: 3468
Type of Review: Revision
Title: Computation of Investment Credit
Description: Taxpayers are allowed a credit against their income tax for investment in certain property used in their trade of business. Form 3468 is used to compute this investment tax credit. The information collected is used by the IRS to verify that the credit has been computed correctly.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 793,467 hours

OMB Number: 1545–0173
Form Number: 4563
Type of Review: Revision
Title: Exclusion of Income From Sources in American Samoa
Description: Used by a U.S. citizen whose income is from sources within a possession of the United States (limited to American Samoa in 1987) to the extent specified in Internal Revenue Code section 931 to claim the benefit of this section. This information is used by the Service to determine if an individual is eligible to exclude possession source income.
Respondents: Individuals or households
Estimated Burden: 65 hours

OMB Number: 1545–0192
For Number: 4970
Type of Review: Extension
Title: Tax on Accumulation Distribution of Trusts
Description: Form 4970 is used by a beneficiary of a domestic or foreign trust to compute the tax adjustment attributable to an accumulation distribution. The form is used to verify whether the correct tax has been paid on the accumulation distribution.
Respondents: Individuals or households
Estimated Burden: 99,000 hours

OMB Number: 1545–0193
Form Number: 4972
Type of Review: Revision
Title: Tax on Lump-Sum Distributions
Description: Internal Revenue Code section 402(e) allows taxpayers to compute a separate tax on a lump-sum distribution from a qualified retirement plan. Form 4972 is used to

correctly figure that tax. The data is used to verify correctness of the separate tax. Form 4972 is also used to make the special capital gain election attributable to Pre-74 participation from the lump-sum distribution.
Respondents: Individuals or households
Estimated Burden: 490,581 hours

OMB Number: 1545–0884
Form Number: 8279
Type of Review: Extension
Title: Election to be Treated as a FSC or as a Small FSC
Description: A foreign corporation and its shareholders must elect to be a Foreign Sales Corporation (FSC) or small FSC. Form 8279 is used to make the election. Form 8279 provides IRS with the necessary information to determine that the foreign corporation qualifies to be a FSC, number and types of shareholders, and tax year of the FSC and its principle shareholder.
Respondents: Businesses or other for-profit
Estimated Burden: 15,013 hours

OMB Number: 1545–0895
Form Number: 3800
Type of Review: Revision
Title: General Business Credit
Description: Internal Revenue Code section 38 permits taxpayers to reduce their income tax liability by the amount of their general business credit, which is an aggregation of their investment credit, jobs credit, alcohol fuel credit, research credit, low-income housing credit, and employee stock ownership (ESOP) credits. Form 3800 is used to figure the correct credit.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 110,711 hours

OMB Number: 1545–0967
Form Number: 8453–F
Type of Review: Revision
Title: U.S. Fiduciary Income Tax Declaration for Magnetic Media/Electronic Filing
Description: This form will be used to secure taxpayer signatures and declaration in conjunction with the Electronic Filing Pilot for trust and fiduciary income tax returns. This form, together with the electronic transmission, will comprise the taxpayer's income tax return (Form 1041).
Respondents: Individuals or households
Estimated Burden: 495 hours
Clearance Officer: Garrick Shear, (202) 566–6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

U.S. Customs Service

OMB Number: 1515–0129
OMB Number: None
Type of Review: Reinstatement
Title: Change in Status of Transaction
Description: The person submitting a request for a ruling in connection with a Customs Transaction should advise Customs in writing when a transaction described as prospective becomes current. This is essential so that the field office concerned is advised of the fact that the ruling is pending.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 6 hours
Clearance Officer: B. J. Simpson, (202) 566–7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0167
Form Number: ATF F 3072 (5210.14)
Type of Review: Revision
Title: Transportation in Bond and Notice of Release of Puerto Rican Tobacco Products, Cigarette Papers and Tubes
Description: ATF F 3072 (5210.14) is used to document the shipment of taxable tobacco products brought into the U.S. in bond from Puerto Rico. The form documents certification by ATF to account for the tax liability as well as any adjustments assessed to the bonded licensee. The form also describes the shipment and identification of the licensee who receive the products.
Respondents: Businesses and other for-profit
Estimated Burden: 2000 hours
Clearance Officer: Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 87–18679 Filed 8–14–87; 8:45 am]
BILLING CODE 4810-25-M

Customs Service

Automated Survey Interface; Significant New Information Dissemination Product Pursuant to OMB Circular A–130

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: This document gives the public notice of a proposed new information dissemination product. The Customs Service, through its Automated Commercial System (ACS), is proposing an Automated Surety Interface. Under this program, Customs will furnish certain information to participating surety companies whose bonds cover Customs entries. This information is to be provided irrespective of any claim by Customs against the surety. For some time, disclosure of this information has been made to interested surety companies on a monthly basis. The ultimate goal of the program is a virtually simultaneous exchange of data between the surety company and Customs. As an interim step, Customs is presently conducting a pilot test under which certain data is being provided to a surety company on a weekly basis. It has been represented to Customs that payment by the sureties on claims for liquidated damages or additional duties will be expedited by eliminating the need for Customs to locate the bond and transmit a copy to the surety.

Customs recognizes that some or all of this information may be considered to be confidential business information which is protected from disclosure under exemption (b)(4) of the Freedom of Information Act (FOIA). Accordingly, Customs invites public comment on whether the disclosure of this information will cause competitive harm.

DATES: Comments must be received on or before October 16, 1987.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Chief, Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2324, Washington, DC 20229 (202–556–8237).

FOR FURTHER INFORMATION CONTACT:

Legal Aspects: John E. Elkins, Chief, Disclosure Law Branch, (202) 566–8681.

Operational Aspects: Jim Childress, Commercial Systems Division, (202) 343–0778.

SUPPLEMENTARY INFORMATION:

Background

OMB Circular A–130, dated December 12, 1985, 50 FR 52730, directs Federal agencies to inform the public of

significant new proposed information dissemination products. Such notice is intended to allow agencies to guage the impact of such products upon affected segments of the public. The proposed furnishing of entry, billing and fines, penalties, and forfeitures, information to surety companies in the proposed Automated Surety Interface is such a product.

In the past, the Customs Service utilized several automated systems to process commercial transactions. However, these systems were independent with little interaction between them. It was thus necessary to be familiar with the features of each system in order to know what information was available and be able to obtain needed data. The requirement of such specialized knowledge tended to fragment scarce resources.

In March 1982, a survey of Customs automation needs was completed. Subsequently, work began on an integrated commercial system to handle a variety of data processing needs. The new system is known as the Automated Commercial System (ACS). ACS was concevied as a comprehensive Customs tracking system to include the monitoring and control of the movement of cargo, the making of entries, the assessment of penalties, and the payment of duties. ACS has been operational since February 1, 1984, and has consistently grown in application and scope.

Among the separate automated systems which had been in operation for some time is a system containing information relating to sureties and their bonds. This data has been compiled from Customs bonds as well as the accompanying entry documents and is now a module of the ACS. The Automated Surety Interface is aimed at improving the accuracy of the bond information provided to Customs. It is also hoped that payment by sureties of valid Customs claims will be expedited by virtue of their having received entry and bond information before their interest matures through a breach of the bond.

For some time, Customs has made available to sureties information in a magnetic tape format with respect to the Customs entry transactions in which the surety's bond is obligated. This information consists of the data elements which are attached as Appendix 1 to this notice. As a pilot test of the system, Customs is furnishing much of this information on a weekly basis to a surety company. The data elements to be provided weekly are set forth in Appendix 2. Three separate groups of information are to be provided. The first consists of open and liquidated entry data prior to any breach of the bond or demand for payment. The second consists of fines, penalties, and forfeitures information, and includes data relating to entries on which there has been a bond violation. The third is information with respect to bills issued to the surety.

With the exception of providing information to sureties as described above, Customs has, pursuant to the Freedom of Information Act, consistently declined to provide entry information of persons not a party to the entry transaction. The basis for this position is that entry documents contain confidential commercial information the disclosure of which could cause substantial harm to a business. Such information is exempt from disclosure pursuant to exemption (b)(4) of the FOIA (5 U.S.C. 552(b)(4)). The potential harm that disclosure of such information could present was recognized in *Timken Co.* v. *United States Customs Service*, 491 F. Supp. 557 (D.D.C. 1980). In *Timken*, the court held that value and quantity information relating to the manufacture of roller bearings was confidential commercial information and exempt from disclosure. The same rationale is applicable to other entry information such as the name of the importer, shipper, consignee, carrier, etc.

The disclosure of entry information to surety companies while refusing to provide it to others may have been based on the contractual relationship between the surety and its principal and on the fact that the surety has a contingent liability to Customs with respect to duties and liquidated damages. On the other hand, it is arguable that until a breach of the bond has occurred and the surety's liability becomes actual rather than contingent, the surety should be accorded no greater right to entry information than any other third party requester. There would appear to be no question that after a demand has been made, disclosure of information to the surety to permit it to ascertain the extent of its liability and any defenses thereto, is proper.

The disclosure of the above-discussed information to surety companies is at a pivotal stage. Before instituting the succeeding phases of the program, Customs deems it appropriate to solicit comments with respect to the impact, if any, of the disclosure of this information on brokers, importers, or other affected individuals. It is these parties rather than Customs who can best judge the impact that discluosure of this information will have on their business. In addition, although the proposed disclosure of information is limited to the data elements listed in Appendix 2, Customs invites comment with respect to claims for confidentiality of information provided in the entry process generally. This will enable Customs to more competently judge the releaseability of entry information in response to future requests.

In order to facilitate public response, we have enumerated below a number of issues upon which we invite comment.

1. Would the disclosure of any or all of the enumerated data elements to sureties cause competitive harm to your business? If so, identify the particular data element(s) and state the nature of the expected harm and its relationship to disclosure of the information.

2. Would the disclosure of any or all of the enumerated data elements to sureties cause competitive harm to your customers, suppliers or other parties? If so, identify the particular data element(s), state the nature of the expected harm and its relationship to disclosure of the information.

3. Would the disclosure of this information to a party other than the surety in the transaction cause competitive harm? If so, identify the particular data element(s) and state the nature of the expected harm and its relationship to disclosure of the information.

4. As a matter of law, is a surety entitled to disclosure of any or all of the data elements described in Appendices 1 and 2 with respect to transactions in which its bond is obligated prior to any violation of the bond?

5. As a matter of practice, which of the data elements listed in the appendices are provided to the surety by you in the normal course of your business?

6. What categories of entry data do you furnish to Customs which are not enumerated in the appendices that you regard as business confidential and exempt from disclosures?

Comments

Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2324, U.S. Customs Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Dated: August 10, 1987.

Gerald J. McManus,

Assistant Commissioner of Customs, Office of Commerical Operations.

Appendix 1—Data Elements Which Have Been Available To Sureties

A Bill Data

1. Code and Name of Region, District and Port of Entry
2. Surety Code
3. Importer Number
4. Importer Name
5. Importer Address
6. Importer Address 2
7. Importer Address 3
8. Name, Number and Address of Agent
9. Customs Bill Number and Due Date
10. Age of Bill
11. Entry Assignment Date (Date the bill was entered)
12. Interest Date
13. Amount Due
14. Principal Amount
15. Interest Amount
16. Type of Bill
17. Bond Number
18. Bond Type
19. Protest Number
20. Protest Date

B Liquidated Entry Data

1. Entry Number
2. Entry Type
3. Broker Code
4. Liquidation Code
5. Importer
6. Importer Suffix
7. Entry Date
8. Liquidation Date
9. Agent IRS Number
10. Agent Suffix
11. Amount of Duty on Liquidation
12. Amount of Tax on Liquidation
13. Bill or Refund Due
14. Type of Liquidation
15. Amount of Withheld Duty
16. Mail Code (How entry-related mailings are distributed)
17. Bond Code (Type of bond)
18. Owner of Merchandise
19. Bond Number
20. Withheld Duties (Whether withheld duties were assessed)

C Unliquidated Entry Data

1. Owner Number
2. Filer Code
3. ACCFLAG (Whether entry information is complete)
4. Julian Calendar Date
5. Duty Class
6. Estimated Duty Amount
7. Amount of Duty Paid
8. Tax Class
9. Tax Estimated Amount
10. Deferred Tax Billed
11. L-Flay (Document from which data derives)
12. Owner Number (Ultimate consignee)
13. Import Specialist Team Number
14. Ext-Susp-Code (Reason for extention or suspension of liquidation)
15. Deemed (Whether entry is deemed liquidated)
16. Final Withdrawal (Whether final withdrawal from warehouse has occurred)
17. Number of Liquidation Extensions
18. Paid Indicator (Whether estimated duties have been deposited)

Appendix 2—Data Elements Provided To Sureties Weekly Culminating In An Interface:

A Open Entry Data

1. Entry Number
2. Entry Type
3. Region, District, Port of Entry
4. Filer Code
5. Surety Code
6. Bond Type
7. Bond Number
8. Bond Location
9. Entry Date
10. Entry Summary Date
11. Entry Release Date
12. Reason for Late Filing
13. Late Reporting Date
14. Cancel Reason
15. Cancel Date
16. Liquidation Hold Indicator
17. Record Type
18. Extension Suspension Code
19. Extension Suspension Date
20. Number of Extensions
21. Reject Date
22. Protest Status
23. Protest Date
24. Document Filing Location
25. Importer of Record
26. Agent for Delivery on Customs Form 4811
27. Name of the Ultimate Consignee
28. Amount of Estimated Duty
29. Amount of Estimated Taxes
30. Amount of Estimated Antidumping Duties
31. Amount of Estimate Countervailing Duty
32. Payment Status
33. Amount of Duty Paid
34. Amount of Tax Paid
35. Amount of Antidumping Duties Paid
36. Delayed Antidumping Duties Code
37. Amount of Countervailing Duties Paid
38. Delayed Countervailing Duties Code

B Liquidated Entry Data

1. Entry Number
2. Surety Code
3. Number of Liq/Reliq
4. Liquidation Type
5. Liquidation Date
6. Liquidated Duty Amount
7. Liquidated Antidumping Duty Amount
8. Liquidated Countervailing Duty Amount
9. Bill or Refund Code
10. Bill or Refund Date
11. Bill or Refund Amount
12. Reason for the Bill Owed
13. Document Filing Location

C Fines, Penalties and Forfeitures Data

1. Case Number
2. Surety Code
3. Bond Number
4. Violator ID (IRS, Customs assigned or system assigned)
5. Violator Name
6. Violater Code
7. Violation Type
8. Status of Violation
9. Violation Date
10. Entry Number
11. Penalty Amount
12. Mitigated Amount
13. Collection Amount
14. Violation Citation
15. Violation Description

D Bill Data

1. Bill Number
2. Surety Code
3. Bill Type
4. Bill Date
5. Bill Status
6. Bill Age
7. Importer Number
8. Document Number
9. Protest Date
10. Protest Date
11. Protest Decision Date
12. Bill Amount
13. Prinicipal Amount
14. Interest Amount
15. Payment Amount
16. Cancel Code

[FR Doc. 87-18653 Filed 8-14-87; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION

Advisory Committee on Health-Related Effects of Herbicides; Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92-463) of October 6, 1972, that the Advisory Committee on Health-Related Effects of Herbicides has been renewed by the Administrator of Veterans Affairs for a two year period beginning July 28, 1987 through July 28, 1989.

Dated: August 4, 1987.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 87-18655 Filed 8-14-87; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 158
Monday, August 17, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

Pursuant to 11 CFR 2.7(d)(1) the Commission has called an open meeting for the following date: Tuesday, August 18, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Matchability of Certain Contributions Submitted for Matching by the Kemp for President Committee

Draft Revisions to the Delegate Selection Regulations (11 CFR 110.14)

The closed meeting scheduled for Tuesday, August 18, 1987, will immediately follow close of open meeting.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 87-18834 Filed 8-13-87; 2:29 pm]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Thursday, August 20, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the disucssion agenda.

1. Proposed amendment to Regulation T (Credit by Brokers and Dealers) to revise the definition of OTC margin bonds to include mortgage related securities. (Proposed earlier for public comment; Docket No. R-0600)

Discussion Agenda

2. Publication for comment of a proposed amendment to Regulation T (Credit by Brokers and Dealers) to permit broker-dealers to aid in the exercise of company stock options owned by employees of the company.
3. Any items carried forward from a previously announced meeting.

Note.— This meeting will be recorded for the benefits of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: August 13, 1987.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 87-18816 Filed 8-13-87;12:53 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Thursday, August 20, 1987, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: August 13, 1987.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 87-18817 Filed 8-13-87; 12:53 pm]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 52, No. 158
Monday, August 17, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 674

[Docket No. 70619-7119]

High Seas Salmon Fishery off Alaska

Correction

In rule document 87-17773 beginning on page 29020 in the issue of Wednesday, August 5, 1987, make the following correction:

On page 29021, in the second column, the signature line was inadvertently omitted and should have appeared before the FR Doc line as:

James E. Douglas, Jr.,
Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 174

Ocean Transportation Service; Amendment

Correction

In rule document 87-17826 beginning on page 29181 in the issue of Thursday, August 6, 1987, make the following correction:

§ 174.3 [Corrected]

On page 29182, in § 174.3, in paragraph (f), in the second column, in the 29th line, "Far East" should read "Europe".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-07-4220-10; GP-07-253; OR-42920 (WASH)]

Proposed Withdrawal of Lands and Opportunity for Public Meeting; Washington

Correction

In notice document 87-17511 appearing on page 28765 in the issue of Monday, August 3, 1987, make the following corrections:

1. In the first column, the heading should read as set forth above.

2. In the second column, in the fourth line, the land description should read:

"Secs. 5, 6, 7, 8, 13, 16, 17, 21 to 28, inclusive,"

3. In the same column, in the fourth paragraph, in the second line, "for public meetings" should read "for a public meeting".

BILLING CODE 1505-01-D

PANAMA CANAL COMMISSION

Privacy Act of 1974; Systems of Records

Correction

In notice document 87-17297 beginning on page 28498 in the issue of Thursday, July 30, 1987, make the following corrections:

1. On page 28500, in the third column, under the fourth heading, in the first line, "defer" should read "deter".

2. On page 28502, in the first column, under the fourth heading, in paragraph 1, in the first line, "Layers" should read "Lawyers".

3. On the same page, in the second column, under the heading

RECORD ACCESS PROCEDURES, following the second line, the final portion of PCC/FMCL-1 and the first portion of PCC/GCCL-1 were omitted and should be inserted as follows:

"See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Claimants, officials of Panama Canal Commission, other government officials, private individuals and companies.

PCC/GCCL-1

SYSTEM NAME:

Marine Accident/Miscellaneous General Claims, GCCL-1.

SYSTEM LOCATION:

Office of General Counsel, Claims, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Shipping companies, crew members, passengers, pilots and other employees of the Panama Canal Commission who are involved in ship accidents which occur in the Panama Canal; third parties; and employees of the Panama Canal Commission who sustain loss of or damage to personal property incident to Government service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information or documents to settle claims for damage to vessels or to the cargo; injury to crew members or passengers of vessels which may arise by reason of their passage through the locks of the Panama Canal under the control of officers or employees of the United States; for injury to, or loss of, property or for personal injury or death,".

BILLING CODE 1505-01-D

Monday
August 17, 1987

Part II

Department of the Interior

Minerals Management Service

30 CFR Parts 202 and 206
Revision of Gas Product Valuation Regulations and Related Topics; Further Notice of Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202 and 206

Revision of Gas Product Valuation Regulations and Related Topics

AGENCY: Minerals Management Service, Interior.

ACTION: Further notice of proposed rulemaking.

SUMMARY: Proposed valuation regulations for gas were published for comment in the **Federal Register** on February 13, 1987 (52 FR 4732). Public hearings were held in Denver, Colorado, on April 7, 1987, and in Houston, Texas, on April 28, 1987. Over 100 written comments were received on this proposed rulemaking.

Because of the extensive and diverse interest raised by this and related rulemakings for valuation of oil and coal, MMS established a procedure whereby it would publish draft final regulations and provide an abbreviated public comment period to obtain further public comment before the rules are issued as final regulations on September 30, 1987. The Congress is aware of and understands this process. See Conference Report on H.R. 1827 in the *Congressional Record* dated June 27, 1987, at pages H5661–H5666.

Accordingly, attached to this notice as an appendix is a draft of the gas valuation regulations in final form, together with a draft of the preamble for the final rule. The draft contains numerous changes from the proposed gas valuation regulations in response to the public hearings and the extensive comments received and reviewed by MMS.

DATE: Comments must be received on or before September 2, 1987.

ADDRESS: Written comments may be mailed to Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 628, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231–3432, (FTS) 326–3432.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rulemaking are John L. Price, Scott L. Ellis, Thomas J. Blair, Stanley J. Brown, and William H. Feldmiller of the Royalty Valuation and Standards Division of the Royalty Management Program (RMP), Minerals Management Service; and Peter J. Schaumberg of the Office of the Solicitor, Washington, DC.

In view of the short public comment period necessitated by MMS's proposed schedule, as understood by Congress, whereby MMS will attempt to issue final rules by September 30, 1987, MMS requests that commenters not simply resubmit comments already provided on the proposed rules. All comments received since publication of the first proposed rulemaking on February 13, 1987, will be included in this rulemaking record. Additional comments should be directed to the provision of the draft final rule in the appendix. Commenters are requested to identify, by section, the provision of the draft final rule to which a comment is directed. Besides specific comments on the draft final rule, MMS also requests commenters to address whether there are additional requirements or approaches which would improve the royalty payment process. The MMS believes it has developed a set of rules which will lead to the proper payment of royalties, but given the interest and concerns raised by this rulemaking, MMS would like to learn of all approaches which will reduce underpayment of royalties and minimize any abuse in payment and collection of royalties. MMS would specifically like comments on the ability of auditors to determine compliance with these regulations. MMS also would like commenters to address the extent to which these draft rules are responsive to concerns regarding royalty underpayments identified in the Linowes Commission Report and reports of the Congress, the General Accounting Office and the Department's Office of Inspector General.

MMS recognizes that arm's-length contract prices are a principal component of these regulations. Under the draft final rules, the prices under arm's-length contracts would represent value and be the primary values under the benchmarks for non-arm's-length contracts. MMS specifically requests comments on the definition of arm's-length contract and on the use of these contracts to determine value for calculating royalty payments.

The Department of Interior (DOI) has determined that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291. This proposed rulemaking is to consolidate Federal and Indian gas royalty valuation regulations; to clarify DOI gas royalty valuation policy and gas transportation and processing allowance policy; and to provide for consistent royalty valuation policy among all leasable minerals. Because the proposed rule principally consolidates and streamlines existing regulations for consistent application, there are no significant additional requirements or burdens placed upon small business entities.

Lessee reporting requirements will be approximately $250,000. All gas sales contracts will be required to be submitted only upon request, or only in support of a lessee's valuation proposal in unique situations rather than routinely, as under the existing regulations.

The public is invited to participate in this proceeding by submitting data, views, or arguments with respect to this notice. All comments should be submitted by 4:30 p.m. of the day specified in the **DATE** section to the appropriate address indicated in the **ADDRESS** section of this preamble and should be identified on the outside envelope and on documents submitted with the designation "Revision of Gas Royalty Valuation Regulations and Related Topics." All comments received by the MMS will be available for public inspection in Room C406, Building 85, Denver Federal Center, Lakewood, Colorado between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

Regulatory Flexibility Act

Because this rule primarily consolidates and streamlines existing regulations for consistent application, there are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this rule. Therefore, the DOI has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Paperwork Reduction Act of 1980

The information collection and recordkeeping requirements located at §§ 206.157 and 206.159 of this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0075.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)] is not required.

List of Subjects

30 CFR Part 202

Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 206

Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Oil and Gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

Date: August 10, 1987.

James E. Cason,

Acting Assistant Secretary, Land and Minerals Management.

Appendix—Draft Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202 and 206

Revision of Gas Royalty Valuation Regulations and Related Topics

Agency: Minerals Management Service (MMS), Interior.

Action: [Draft] Final rule.

Summary: This rulemaking provides for the amendment and clarification of regulations governing valuation of gas for royalty computation purposes. The amended and clarified regulations govern the methods by which value is determined when computing gas royalties and net profit shares under Federal (onshore and Outer Continental Shelf) and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

Effective date: November 1, 1987 [tentative].

For further information contact: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231–3432, (FTS) 326–3432.

Supplementary information: The principal authors of this rulemaking are John L. Price, Scott L. Ellis, Thomas J. Blair, Stanley J. Brown, and William H. Feldmiller of the Royalty Valuation and Standards Division of the Royalty Management Program (RMP), Minerals Management Service; and Peter J. Schaumberg of the Office of the Solicitor, Washington, DC.

1. Introduction

On February 13, 1987, 52 FR 4732, MMS issued a notice of proposed rulemaking to amend the regulations governing the valuation of gas from Federal leases onshore and on the OCS, and from Indian Tribal and allotted leases. During the public comment period, MMS received almost 100 written comments. In addition, public hearings were held in Lakewood, Colorado, on April 7, 1987, and in Houston, Texas, on April 28, 1987. Sixteen persons made oral presentations at these hearings.

[Tentative: Because of the complexity of the regulations, and in accordance with MMS's understanding with the Congress, MMS issued a further notice of proposed rulemaking which included as an appendix MMS's draft of the final regulations. The purpose of the further notice of proposed rulemaking was to obtain further public comment during a short comment period and then to make any necessary revisions to the final regulations. See Conference Report on H.R. 1827, in the *Congressional Record* of June 27, 1987, pages H5651–H5666. A total of ________ additional comments were received.]

The MMS has considered carefully all of the public comments received during this rulemaking process, which included draft rules and input from the Royalty Management Advisory Committee. A complete account of that process is included in the preamble to the proposed regulations issued in February 1987. Based on its review, MMS hereby adopts final regulations governing the valuation of gas from Federal and Indian leases. These regulations will apply prospectively to gas production on or after the effective date specified in the **DATES** section of this preamble.

II. Purpose and Background

The MMS has revised the current regulations regarding the valuation of gas to accomplish the following:

(1) Clarification and reorganization of the existing regulations at 30 CFR Parts 202 and 206.

(2) Creation of regulations consistent with the present organizational structure of the Department of the Interior (DOI).

(3) Placement of the gas royalty valuation regulations in a format compatible with the valuation regulations for all leasable minerals.

(4) Clarification that royalty is to be paid on all consideration received by lessees, less applicable allowances, for production removed or sold from the lease.

(5) Creation of regulations to guide the lessee in the determination of allowable transportation and processing costs for gas to aid in the calculation of proper royalty due the lessor.

A number of sections have been renumbered and/or moved to a new subpart. Sections 202.150, 202.151, 202.152, 206.150, 206.151, and 206.152 have been revised. In addition, §§ 206.153, 206.154, 206.155, 206.156, 206.157, 206.158, and 206.159 have been added to the appropriate subparts.

Several general provisions which relate to both oil and gas have been added to Part 202. These provisions are included in the final rule to amend the oil valuation regulations published by the Department elsewhere in this issue.

This rule applies prospectively to gas production on or after the effective date of this rule. It supersedes all existing gas royalty valuation directives contained in numerous Secretarial, Minerals Management Service, and U.S. Geological Survey Conservation Division (now Bureau of Land Management, Onshore Operations) orders, directives, regulations, and Notices to Lessees (NTL) issued over past years, particularly NTL–5 (42 FR 22610, May 4, 1977, as amended, 51 FR 26759, July 25, 1986). Specific guidelines governing reporting requirements consistent with these new gas valuation regulations will be incorporated into the MMS Payor Handbook.

For the convenience of oil and gas lessees, payors, and the public, the following chart summarizes the effects of these rules.

Regulation changes	Descriptions
I. REDESIGNATIONS:	
Sections 202.150, 202.151 and 202.152 are redesignated as §§ 202.100, 202.53, and 202.52, respectively.	This administrative action more appropriately locates within 30 CFR the information contained in these sections.
II. REMOVALS:	
Sections 206.106 and 206.107 are removed from Subpart C of Part 206.	These requirements have been incorporated into §§ 202.150 and 202.151.
III. ADDITIONS:	
Sections 202.150, 202.151, and 202.152 are added to Subpart 202. Sections 206.10, 206.153, 206.154, 206.155, 206.156, 206.157, 206.158, and 206.159 are added to Part 206.	These new sections provide gas valuation standards and procedures and identify allowable costs for transportation and processing to be deducted from gas royalty value.

The rules in § 206.150 expressly recognize that where the provisions of any Indian lease, or any statute or treaty affecting Indian leases, are inconsistent with the regulations, then the lease term, statute, or treaty governs to the extent of the inconsistency. The same principle applies to Federal leases.

A separate gas definitions section applicable to the royalty valuation of gas is included in this rulemaking in Part 206. All definitions contained under each subpart of Part 206 will be applicable to the regulations contained in Parts 202, 203, 207, 210, and 241.

III. Response to General Comments Received on the Proposed Gas Valuation Regulations and Related Topics

The notice of proposed rulemaking for the amendment and clarification of regulations governing valuation of gas for royalty computation purposes was published in the **Federal Register** on February 13, 1987 (52 FR 4732). The public comment period on the proposal closed on May 13, 1987. Seventy-eight commenters submitted almost 100 comments which were considered in preparing this rulemaking.

Of the 78 commenters, 7 were tribal groups, 1 was a tribal council, and 1 was an Indian trade group for a total of 9 Indian commenters; one commenter was a combined State/Indian association. A total of 15 commenters represented various government agencies: 5 State entities, 4 Federal agencies, 2 State associations, 2 State Governors, and 2 local governments. Fifty-three industry commenters responded; 39 commenters from oil and gas companies, 8 individual commenters, and 6 industry trade groups.

Forty-three respondents—24 representing industry and 19 representing States, Indians, and local governments—made comments on the basic issues and principles underlying the proposed rulemaking. The comments did not address specific sections of the proposed regulations, but generally revolved around the basic premise underlying the proposed valuation methodology.

The respondents were generally composed of two groups, with industry on one side and States, Indians, and local governments on the other. Industry generally endorsed the basic principles underlying the proposed regulations. While the industry commenters objected to many of the specific provisions of the proposed rules, they stated generally that a market-oriented approach based on gross proceeds from arm's-length contracts would fulfill MMS's goals of creating royalty certainty, fairness, and long-term revenue maximization. Two industry commenters advocated the adoption, in total, of the Royalty Management Advisory Committee (RMAC) Gas Panel's recommendations as the only proper solution to the valuation issue. States, Indians, and local governments, on the other hand, generally commented that they objected to the basic premise underlying the proposed valuation methodology and disapproved of the proposed regulations for a variety of reasons.

The general comments raised by industry, States, and Indians may be categorized similarly to those raised with respect to the oil valuation regulations: (1) Acceptance of gross proceeds under an arm's-length contract, or the benchmark, as the value for royalty purposes; (2) deduction of transportation costs; (3) legal mandates and responsibilities toward Indians; (4) complexity and obscurity of regulations and definitions; and (5) economic impacts. Because the general issues raised and MMS's responses thereto are so similar, MMS hereby incorporates the discussion in the General Comments portion of Section III of the Preamble to the final oil valuation regulations in a document published elsewhere in this issue as if fully and completely set forth herein.

IV. Section-By-Section Analysis and Response to Comments

Comments were not received on every section of the proposed regulations. Therefore, if those sections were not changed significantly from the proposal, there generally is no further discussion in this preamble. The preamble to the proposed regulation (52 FR 4732, February 13, 1987) may be consulted for a full description of the purpose of those sections. For other sections, this preamble will address primarily the extent to which the final rule was changed from the proposal. Again, a complete discussion of the applicable sections may be found in the preamble to the proposed regulation.

Section 202.150 Royalty on gas.

One Indian commenter recommended that paragraph (a) should provide specifically that Indian lessors, as well as MMS, have the right to require payment in-kind for royalties due on production.

MMS Response: Most Indian lessors have the authority to require payment in-kind for royalties due on production. To the extent the lease terms so provide, the lessor may take its royalty in-kind. However, because requests to take royalty in kind may involve operational difficulties for the lessee, MMS will continue to administer such requests. Therefore, if an Indian lessor wants royalty in kind, he must contact MMS. The MMS then will make arrangements with the lessee for the in-kind payment. The MMS has added a provision clarifying that when royalites are paid in value, the royalties due are equal to the value for royalty purposes multiplied by the royalty rate.

Section 202.150(b)

The MMS received seven industry comments stating that unavoidably flared gas should be exempt from royalty requirements. Two commenters stated that the definition of the term "unavoidably lost" should be incorporated in § 206.151, Definitions. The commenters also recommended that this paragraph address the procedures for obtaining permission to use gas off-lease for the benefit of the lease.

One industry commenter recommended deletion of the phrase "when such off-lease use is permitted by the appropriate agency." The commenter recommended that legal interpretations affecting the inclusion of any on-lease or off-lease use could be more appropriately covered in the MMS Payor Handbook.

One industry commenter stated that on-lease or off-lease royalty-free gas use should also include gas used in post-production operations, including boosting residue gas delivery pressure and other operations incidental to marketing as this gas is used for the benefit of the lease.

One industry commenter recommended the inclusion of such language as follows: "Gas used for the benefit of the lease is royalty free, which includes gas used in lease equipment located on a platform or in a central facility serving multiple leases. Such platform or central facility may be located on a lease other than the one physically providing gas used."

One industry commenter stated that they do not agree that the standard for royalty liability detailed in this paragraph is consistent with section 308 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1756, which limits royalty liability to loss or waste due to negligence or noncompliance with operational requirements.

Two industry commenters proposed that MMS consider expansion of the clause to include all gas used "on or off a lease as long as it is for the benefit of the lease."

One industry commenter endorsed MMS's decision that gas used off-lease for the benefit of the lease is royalty-free when such use is permitted by the appropriate agency.

Some Indian commenters also recommended that any royalty-free use of gas be subject to prior approval to ensure that production from Indian leases is not disproportionately used in royalty-free operations.

MMS Response: The determination of gas avoidably lost and royalty-free use of gas (whether used off-lease or on-lease) is an operational matter covered by the appropriate regulations of the Bureau of Land Management (BLM) and MMS for onshore and offshore operations, respectively. Therefore,

although these comments raised many substantive issues, they are not properly addressed in this rulemaking. MMS does not believe that prior approval for royalty-free use of gas is warranted because most leases allow royalty-free use of gas and it is a matter which will be reviewed during audits to prevent abuse.

Proposed § 202.150(b)(2), which addressed royalty-free use of gas for leases committed to unit or communitization agreements, has been deleted from the final rules. MMS is satisfied that this issue is also an operational matter governed sufficiently by the appropriate operation of the unit agreement or communitization agreement.

One industry commenter was strongly in agreement with § 202.150(b)(3) of the proposed rules, which recognizes the provisions of Indian leases that are inconsistent with the regulations.

One Indian commenter stated that this paragraph may not act to the benefit of Indian lessees unless MMS makes a specific requirement by instruction, manual releases, or notices to lessees with respect to the specific valuation guidelines to be applied.

MMS Response: The provisions of proposed § 202.150(b)(3) were adopted in the final rules as a part of § 202.150(b). In most instances, the valuation regulations will apply equally to both Federal and Indian leases. This section covers any leases which may be inconsistent with the regulations. The final regulations recognize the primacy of statutes, treaties, and oil and gas leases and provide a means for dealing with special valuation requirements for both Indian and Federal leases.

Section 202.150(c)

Section 202.150(c) was proposed as § 206.150(d). It provides that if the BLM (for onshore leases) or MMS (for offshore leases) determines that gas was avoidably lost or wasted, then the value of that gas will be determined in accordance with Part 206. This section also applies to gas drained from onshore leases for which BLM determines compensatory royalty is due.

One industry commenter stated that the term avoidable indicates such losses could have been anticipated and eliminated and that serious charges like these should be documented and proven, not merely assumed after the loss has been reported. Therefore, the commenter takes exception to this regulation.

MMS Response: Avoidably lost determinations are handled by operations, BLM onshore and MMS offshore, and are not a valuation issue. Any operator or lessee that BLM or MMS notifies of an avoidable loss determination has the right to appeal the determination if it believes it is unjust or unfair.

One Indian commenter stated that payment should be due for the entire value, and not just the royalty portion of gas that is determined to have been avoidably lost or wasted from Indian leases.

One industry commenter stated that it should be made clear in this provision that the amount due for avoidably lost gas should be a royalty value and not the total value (100 percent).

MMS Response: BLM and MMS policy is to assess royalty only for that onshore gas determined to have been avoidably lost on and after October 22, 1984. This date is the effective date of BLM's revised regulations at 43 CFR 3162.7-1(d) (49 FR 37356, September 21, 1984), which included the provision for royalty on avoidably lost gas in accordance with section 308 of FOGRMA, 30 U.S.C. 1756. The MMS and BLM believe that collection of royalty provides an effective deterrent to wasting gas.

Section 202.150(d)

Five industry commenters opposed § 202.150(d), which was proposed as § 202.150(c). They questioned the authority to require other non-Federal/Indian lessees to pay royalties on leases on which they are not the lessee. According to the commenters, this could present gas balancing problems where production taken by a lessee falls below that lessee's production entitlement. These commenters suggested that proposed § 202.150(c) fails to recognize the marketing aspects of production.

MMS Response: Section 202.150(d) of the final rules states that all production attributable to a Federal or Indian lease under the terms of the agreement is subject to the royalty payment and reporting requirements of Title 30 of the Code of Federal Regulations even if an agreement participant actually taking the production is not the lessee of the Federal or Indian lease. Most important, however, § 202.150(d) requires that the value, for royalty purposes, of this production be determined in accordance with 30 CFR Part 206 under the circumstances involved in the actual disposition of the production. As an example, if a Federal lessee does not sell or otherwise dispose of its allocable share of unit production, it will be sold or otherwise disposed of by one of the other unit participants. If one of the unit participants other than the Federal lessee transports unprocessed gas to a sales point off the unit area under an arm's-length transportation agreement and then sells the gas under an arm's-length sales contract, the value, for royalty purposes, will be that person's gross proceeds less the costs of transportation incurred under the arm's-length transportation agreement. This provision does not address the issue of what person must report and pay the royalties; it only addresses the issue of valuation.

The MMS does not intend that non-Federal and non-Indian lessees must conform to these regulations, but merely has provided that the lessee may determine its royalty liability in accordance with the other interest owners' contracts or proceeds as long as those royalties comply with these value regulations. Any gas balancing problem that may exist because of interest owners taking more than their entitlement is a matter to be settled by the agreement members.

Two industry commenters also stated that the foreseeable results of this paragraph include: "* * * (1) chronic late payments of royalties; (2) inconsistent AFS and PAAS reporting; (3) difficulty in determining proper royalty values where the overproduced working interest owners dispose of production pursuant to Non-arm's-length transactions; and (4) excessive accounting and administrative costs for MMS and all working interest owners."

MMS Response: The MMS believes that lessees will be able to comply with the requirements of the regulations.

Two industry commenters recommended that paying and reporting royalties be accomplished solely on the basis of sales. According to these comments, because royalties will have been paid on total sales from the leases, there should be no decrease in royalty payments due over the life of the lease through the use of the sales approach.

MMS Response: Paying and reporting royalty solely on the basis of sales would not conform to the requirements of the federally approved agreement or the terms of the lease. Therefore, it is not an acceptable procedure.

Section 202.151 Royalty on processed gas.

Section 202.151(a)

Two industry commenters recommended deleting the word "reasonable" before the words "actual costs" in paragraph (a) because the lessee should be able to deduct actual costs from the processed gas value.

MMS Response: The MMS's policy is to allow "reasonable" actual costs incurred by the lessee for processing lease production. The MMS does not

believe that it should share in unreasonable costs and will not adopt this suggestion.

Section 202.151(b)

Eight industry commenters stated that an allowance for boosting residue gas should be allowed under paragraph (b) for operation of the processing plant. The rationale was that costs associated with this process are incurred as a result of processing and should not be regarded as costs necessary to place the gas in marketable condition.

MMS Response: The regulations generally maintain the MMS's policy that the lessee is required to condition the production for market. The cost for boosting residue gas is considered as a cost necessary to place the gas in marketable condition, and will not be an allowable deduction.

Three industry commenters recommended deleting the word "reasonable" before the words "* * * amount of residue gas * * *" and allow actual amounts of residue gas royalty free.

MMS Response: Historically, MMS's policy has been to allow a reasonable amount of residue gas to be royalty free for the operation of a processing plant. In most instances the actual amounts of residue gas used are considered to be reasonable.

Section 202.151(c)

Two industry commenters strongly endorsed the language set forth in paragraph (c).

One Indian commenter stated that "* * * the Secretary should not retain unilateral authority to authorize the royalty-free reinjection of residue gas or gas plant products from Indian production into unit areas or communitized areas." The recommendation was that the volume of royalty-free residue gas or gas plant products which can be reinjected into a unit area should be limited to the ratio of lease production to total unit production multiplied by the volume of unit production reinjected.

One industry commenter requested clarification that the use of the word "reinjection" includes original injection. In addition, the commenter recommended deletion of the qualification "* * * when the reinjection is included in a plan of development or operations and the plan has received BLM or MMS approval, * * *." because the recovery must be paid for entirely by the lessee.

MMS Response: The BLM or MMS for onshore or offshore operations, respectively, has the authority to approve the plan of development or operations. The issue regarding reinjection of residue gas or gas plant products is a matter which is addressed by the appropriate operational regulations of BLM and MMS.

Section 202.152 Standards for reporting and paying royalties on gas.

Section 202.152(a)

One industry commenter recommended that the phrase "if the Btu value is required pursuant to the lessee's contract" be added to the end of the last sentence of paragraph (a)(2). This commenter stated that Btu measurement is an expensive process and should not be required periodically unless necessary.

One Federal agency commenter stated that the frequency of Btu measurement be required quarterly, if not monthly, if not covered by the lessee's contract. This commenter stated that there are many situations which may require more frequent monitoring of the Btu heating value to assure proper assessment of gas royalties.

MMS Response: The Btu measurement is necessary in determining the proper value of the gas for royalty purposes. In addition, the BLM onshore and MMS OCS operations regulations require periodic Btu measurements.

Section 202.152(b)

One industry and one Federal agency commenter suggested that the words "where applicable" be added at the end of paragraph (b)(2). They stated that when the production is composed of carbon dioxide, nitrogen, or helium there will be no applicable Btu value.

MMS Response: This regulation has been modified in the final rule to read as follows: "Carbon dioxide (CO_2), nitrogen (N), helium (He), residue gas and any other gas marketed as a separate product shall be reported by using the same standards specified in paragraph (a)." The concern expressed regarding Btu values for nonhydrocarbon gases is resolved by the inclusion of the words "where applicable" in the final rule for paragraph (a).

Regarding paragraph (b)(4), one Indian commenter stated that if sulfur is sold in a unit other than a long ton, the lessee should be allowed to report it to MMS and to Indian lessors in that unit.

MMS Response: The unit for reporting sulfur volumes must be standardized for reporting purposes. The most common unit used by industry for reporting sulfur is the long ton. A simple arithmetic formula can be used to convert a unique sales unit to long tons.

Section 206.150 Purpose and scope.

Section 206.150(a)

Two Indian commenters, one Federal agency, and one industry commenter suggested that Indian and Federal lands are dissimilar and deserve separate treatment when valuation and other gas production matters are under consideration. They recommend that separate regulations be promulgated for Indian leases.

One Federal agency commenter concurs with MMS's recommendation that Indian Tribal and allotted leases be treated under the same gas valuation standards applied to Federal leases.

MMS Response: The MMS believes that because these regulations provide for a reasonable and appropriate value for royalty purposes, separate rules for Federal and Indian leases generally are unnecessary. The regulations in § 206.150(b) recognize the primacy of terms of statutes, treaties, and oil and gas leases which provide special valuation requirements for both Federal and Indian leases. In addition, certain additional provisions applicable only to Indian leases have been included in these regulations.

Section 206.150(b)

One industry commenter suggested the addition of the phrase "in the event that any term of an approved existing unit or communitization agreement is inconsistent with the final rule, then such agreement will govern to the extent of the inconsistency."

MMS Response: Section 18 of the standard Federal form of a unit agreement states: "The terms, conditions, and provisions of all leases, subleases, and other contracts relating to exploration, drilling, development or operation for oil or gas on lands committed to this agreement are hereby expressly modified and amended to the extent necessary to make the same conform to the provisions hereof * * *." Therefore, the offered language is unnecessary owing to this existing unit agreement provision.

One Indian commenter suggested the addition of the phrase "provisions of Title 25 of the Code of Federal Regulations will supersede the provisions of this part, to the extent of any inconsistency."

MMS Response: The regulations currently in Title 25 of the Code of Federal Regulations are identical to the provisions of many Indian leases. Therefore, these final regulations would cover any inconsistencies with lease terms if there were any. Moreover, BIA has proposed to amend the valuation

regulations in 25 CFR simply to refer to the MMS valuation regulations. See 48 FR 31978, July 12, 1983.

One Indian commenter recommended that where provisions of any Indian lease, or any statute or treaty affecting Indian leases, as stated or as interpreted by the courts, are inconsistent with the regulations, then the lease, statute or treaty, or court interpretation would govern to the extent of the inconsistency.

MMS Response: This suggestion was not adopted because it was not considered necessary. If the regulations are inconsistent with the requirements of any court decision, the court decision would take precedence.

Section 206.150(c)

One industry commenter requested that consideration be given to the establishment of a "statute of limitations" for MMS audit and adjustment purposes. This commenter suggested that a 6-year period be adopted which would commence with the filing of the lessee's royalty report. It was also suggested that a provision for the lessee and MMS to mutually agree to waive the limitation for specific incidents and items under appeal or before the courts, but it should never apply in cases of fraud. This would partially relieve both the lessee and MMS of records archival responsibility and the associated costs, which are significant. Also, the limitation goes well beyond the cost-effective period for conducting normal compliance and followup audits. The suggested statute of limitations could be similar in concept and language as that used by the Internal Revenue Service.

MMS Response: The MMS performs all audits in accordance with 30 CFR 217.50. Any limitation such as that suggested would properly be included in a rulemaking to amend that section of the regulations. Therefore, it is beyond the scope of this rulemaking. The MMS has modified the provision in the final rule to make it clear that this provision applies to payments made directly to Indian Tribes or allottees as well as those made to MMS either for Federal or Indian leases.

Proposed § 206.150(e) would have required royalties to be paid on insurance compensation for unavoidably lost gas.

Seven industry commenters stated that to require a lessee to pay royalties on any compensation received "through insurance coverage or other arrangements for gas unavoidably lost is unfair." They stated that insurance proceeds are not received for the sale of production and should not be subject to sharing with the lessor. They believe, however, that if MMS insists on collecting a portion of such proceeds, the cost of such insurance coverage should be allowed as a deduction from royalty.

MMS Response: The MMS has removed this provision from the final rules. Pursuant to § 202.150(b) of the final rules, no royalty is due on production which is unavoidably lost. Therefore, MMS has determined that no royalty is due on any insurance compensation for such production.

Section 206.151 Definitions.

"Allowance"—One industry commenter suggested that the proposed definition be modified as follows: "Processing allowance means an allowance for processing gas; i.e., an authorized or an MMS-accepted or-approved deduction for the costs of processing gas determined pursuant to §§ 206.158 and 206.159." The same commenter stated further that "Transportation allowance means an allowance for moving unprocessed gas, residue gas, or gas plant production to a point of sale or point of delivery remote from the lease, unit area, communitized area, or processing plant: i.e., an authorized or an MMS-accepted or -approved deduction for transportation costs, determined pursuant to §§ 206.156 and 206.157." This commenter recommended deleting the phrase "for the reasonable, actual costs incurred by the lessee. The method of determining the allowance should be addressed in the regulation setting forth the calculation method, not in the definition of allowance. If MMS adopts comparable arm's-length transportation, and processing costs as a benchmark for non-arm's-length contracts, the above cited phrase could be incorrect in certain instances."

Four industry and one Indian commenter stated that certain terms incorporated in the definition are subjective in nature. One industry commenter stated: "The New Rules do not draw a clear, objective line between costs that may be deducted and costs that may not be deducted. What is 'remote'? What is 'field gathering'?" Two industry commenters want the word "reasonable" deleted in the definition of "processing allowance and transportation allowance." They believe that the "Lessee should be entitled to deduct actual cost of processing and transportation. 'Reasonable' implies that the deduction may be something less than actual." One Indian commenter stated: "* * * the use of the terms accepted and approved call into question important issues regarding the relationship of the acceptance or approval with later audit. We assume that acceptance would not preclude later audit review and disallowance or modification when justified." One industry commenter suggested deleting the words "remote from" and replacing them with "off." The commenter "believes what is really intended by the phrase 'remote from' is to cover transportation to sales and delivery points off the lease."

Finally, one Indian commenter, referring to "allowance," pointed out that: "The definition should clearly specify that the transportation allowance applies only to transportation from *the lease boundary* to a point of sale remote from the lease and that such costs be reasonable, actual, *and necessary.*"

MMS Response: The final rule includes some modifications to the proposed language. It should be noted that processing and transportation allowances are "accepted" subject to review and/or audit. The MMS also has deleted the phrase "remote from the lease" and replaced it with the phrase "off the lease" for clarification that any transportation off the lease, except gathering (see definition below), is eligible for an allowance.

"Area"—One industry commenter stated that " 'Area' should be more precisely defined so that there are reasonable limits to how large an 'area' is. In addition, for the sake of clarification, the words 'or producing unit' should be inserted after 'oil and/or gas field' * * *."

MMS Response: For royalty computation purposes, the definition of "area" must remain flexible so that it may be applied to diverse situations. The size of an "area" may vary with each specific royalty valuation determination for gas.

"Arm's-length Contract"—The proposed definition of "arm's-length contract" was addressed by 46 commenters—7 Indian, 1 State/Indian association, 3 States, 1 State association, 1 State Governor, 27 oil and gas companies, 4 industry trade groups, and 2 individuals.

Eighteen industry commenters, three industry trade groups, and one State commenter stated that the proposed definition of arm's-length contract is so restrictive that many perfectly valid arm's-length transactions may fail to qualify, thus potentially rendering the key element of the benchmark system meaningless. These commenters suggested that MMS should adopt a definition of "affiliated person" based on control versus mere ownership of

stock. They stated that in order to eliminate this problem, the underlying language should be deleted in favor of language already adopted by BLM in its regulations implementing section 2(a)(2)(A) of the Minerals Lands Leasing Act of 1920 (MLLA). The rule, 43 CFR 3400.0–5(rr)(3), added by 51 FR 43910, 43922 (1986), specifies that:

Controlled by or under common control with, based on the instruments of ownership of the voting securities of an entity, means:

(i) Ownership in excess of 50 percent constitutes control;

(ii) Ownership of 20 through 50 percent creates a presumption of control; and

(iii) Ownership of less than 20 percent creates a presumption of noncontrol.

One industry commenter further recommended that "* * * MMS also adopt a 5% ownership threshold, below which there is an absolute presumption of noncontrol which is not subject to rebuttal. The 5% threshold is taken from the Investment Companies Act [* * *] which establishes that there is no effective affiliation between parties when direct or indirect ownership of voting stock is below 5%."

One industry commenter stated: "* * * Additionally, for those companies in which there is a definite controlling interest, a transaction should still be treated as arm's-length if the controlling company is regulated by a regulatory agency who approves rates or tariffs charged to third parties."

Sixteen industry commenters recommended changing MMS's reference from "persons" to "parties." One of these commenters stated that "Involvement in one or more joint operations with a competitor should not be viewed as materially affecting the arm's-length nature of transactions between the firms. However, the reference to 'joint venture in the definition of 'person,' which is referenced in the proposed definition of arm's-length contract, could be improperly construed as including normal joint oil field operations conducted under the terms of joint operating or similar agreements. Joint operations clearly involve no interlocking ownership of the instruments of voting securities as between the firms. Joint operations are undertaken to accomplish effective reservoir management, to satisfy spacing requirements, or to share the enormous costs involved in certain OCS and frontier areas."

One industry commenter was concerned that: "The proposed language does not clarify at what time affiliation is to be determined. Is it when the contract is originally executed or some subsequent time during the term of the contract? In the current climate of mergers and acquisitions, affiliation may change." Another industry commenter stated that, although the definition of "arm's-length contract" is well written, any additional language elaborating on the state of being affiliated should be deleted because it would allow auditors to reject too many arm's-length contracts.

One State commenter stated that "The definition of 'arm's-length contract' is clearly deficient because it is limited to formal affiliation or common ownership interests between the contracting parties. The assumption behind accepting arm's-length contract prices is that those prices will reflect market value. The definition proposed by MMS ignores the fact that parties may have contractual or other relationships or understandings which would cause them to price gas below its value, especially if the benefit of the reduced royalty burden can be shared by means of the gas sales contract." One Indian commenter questioned "* * * whether there are any truly arm's-length relationships in today's market which would make an arm's-length valuation method valid. We are particularly concerned that the arm's-length label essentially forecloses any scrutiny by MMS of the value reported by the lessee." One State/Indian association stated that nonaffiliation does not guarantee arm's-length: "For example, arrangements between families (via blood, kinship, heir or marriage) offer similar conditions for influencing proceeds subject to royalty."

Two State commenters, one State/industry association, one Indian, and one Indian trade group are of the opinion, as expressed by one commenter, that: "MMS's desire for an almost purely objective' test provides a totally inadequate justification for giving away the power to prevent manipulation of the public's royalties." These commenters agree that: "The definition as proposed is not workable even though it is objective." They suggest that MMS's definition in the draft regulations presented to the RMAC would allow more legally accurate results:

Arm's-length contract means a contract or agreement that has been freely arrived at in the open market place between independent, nonaffiliated parties of adverse economic interest not involving any consideration other than the sale, processing, and/or transportation of lease products, and prudently negotiated under the facts and circumstances existing at that time.

Five Indian, one Indian trade group, one State/Indian association, and two State commenters agreed that, as one commenter phrased it: "The adverse economic interest and open market requirements have long been standard criteria for determining the arm's-length nature of contracts. These criteria have allowed for an accurate line of demarcation between arm's-length and non-arm's-length."

One State commenter supplied the following questions to be asked to test the arm's-length nature of a contract: "(1) Is there an individual who is a board member, officer, partner or employee of one of the contracting parties, and also a board member, officer or employee of the other? (2) What, if any, other commercial relationships exist or are being proposed between the buyer and seller? (3) Is there any family relationship between the buyer and seller? (4) Is there any other special relationship between the parties to the gas sales contract?"

MMS Response: Based on the numerous comments concerning the "restrictive" nature of the definition and the soundness of their arguments, MMS has decided to adopt the "control" language found in the BLM's regulations at 43 CFR 3400.0–5(rr)(3) quoted above.

Furthermore, MMS recognizes that for the purposes of determining whether a contract is arm's-length or non-arm's-length, affiliation must be determined on each individual contract. This means that, for example, two companies may be involved as 60–40 partners in a joint venture to acquire and develop an OCS lease. If the company with the 60 percent interest buys the production from the joint venture company, that contract will be non-arm's-length. However, the two companies who formed the joint venture still may be considered by MMS to have an arm's-length sales contract between them for production from another lease, provided the 20-percent ownership threshold is not exceeded. In the event that one company does own a 20-percent or greater interest in the other, MMS would presume that any transaction between them is non-arm's-length.

The MMS may require a lessee to certify ownership in certain situations. Documents that controllers or financial accounting departments of individual companies file with the Securities and Exchange Commission concerning significant changes in ownership must be made available to MMS upon request.

The final rule also provides that to be considered arm's-length for any specific production month, a contract must meet the definition's requirements for that

production month as well as when the contract was executed.

The very nature of an arm's-length contract implies an adverse economic interest between the contracting parties. The MMS believes that the intent of the final definition (which includes the BLM "control" language) satisfies the concerns of those commenters who thought that the definition should include specific "adverse economic interest" language. Moreover, MMS has included in the final rule a provision which requires that, to be arm's-length, a contract must reflect the total consideration actually transferred from the buyer to the seller either directly or indirectly. For example, if the parties to the contract agree that the price for gas from a Federal or Indian lease will be reduced in exchange for a bonus price to be paid for other production from a fee lease, MMS will not treat that contract as arm's-length. The MMS does recognize, however, that two parties may have a history of dealing so that some may argue that any contract between them could be construed as including some consideration other than the specified price. It is not MMS's intention to exclude such bona fide agreements from the definition of arm's-length contract.

This definition in no way limits the Secretary's authority to question or "look behind" an arm's-length agreement if there is reason to suspect that elements of the agreement are less than arm's-length. The MMS also has added language to the definition which specifically excludes contracts between individuals related by blood or marriage.

"Audit"—One industry commenter expressed concern over MMS's interpretation of what constitutes an audit: "MMS's use of terms such as 'review,' 'examination,' rather than 'audit,' arbitrarily eliminates the right of lessees to offset overpayments and underpayments discovered during the course of an audit." This commenter believes that an account reconciliation by MMS should be termed an audit.

One Indian commenter did not disagree with the definition but thought that the processed information available to MMS is not adequate to perform thorough audits. "Our view of the definition of audit is academic because the MMS will accept payment reports without review in the future as in the past, unless resources and personnel are provided by the Tribe to accomplish the task."

One industry commenter stated that the review and resolution of exceptions processed by MMS's automated systems constitutes auditing by mail. The industry takes exception to this procedure.

MMS Response: The MMS has simplified the definition of "audit" as follows: "Audit means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal and Indian leases."

"Compression"—One industry commenter suggested deleting the definition because the term does not require an explanation.

MMS Response: The MMS believes that the definition should be retained because it clarifies a term used in the regulations.

"Field"—One industry commenter suggested adding the underlined language to clarify that this definition is for royalty purposes: "Field means, *for purposes of oil and gas royalty,* a geographic region * * *."

MMS Response: The additional language proposed by the commenter is unnecessary because the underlying premise of all the definitions contained in § 206.151 is that they are for royalty purposes.

"Gas"—One industry commenter stated that "The term should refer to unprocessed gas. The chemical definition is inappropriate in this context because it fails to distinguish between manufactured and raw gas."

MMS Response: The MMS believes that the definition adequately and correctly defines the term "gas" in language which is accepted by the oil and gas industry.

"Gas Plant Products"—One industry commenter stated that the phrase "excluding residue gas" should be deleted from this paragraph. According to this commenter, "Residue gas is a manufactured product as that term has been used by Federal courts in the royalty context. See *U.S. v. General Petroleum; California v. Seaton* affirmed *California v. Udall* * * *. If gas is processed, or manufactured there is no rational basis for limiting the deduction of manufacturing costs against the value of only gas plant products other than residue."

One industry commenter suggested, "* * * we think the word 'nitrogen' should be excluded from the definition of 'Gas Plant Products' since some natural gas is high in this component, and there is currently a small or nonexistent market for small amounts of nitrogen. Purchasers have traditionally downgraded the price for high nitrogen gas, and if producers have to bear additional royalty as well, they may elect to shut in or plug wells due to poor economics."

MMS Response: The MMS does not agree that the phrase "excluding residue gas" should be deleted from this paragraph. Historically, no processing allowance has been allowed to be applied against the residue gas, and MMS generally has retained this position in the final rule. MMS has also concluded that the definition should not be modified to exclude nitrogen. MMS has, however, included in § 206.158(d) a provision for an extraordinary processing allowance for unique types of gas production operations.

"Gross Proceeds"—Forty-three commenters responded regarding this definition—36 industry, 3 Indian, 1 State, 1 State/Indian association and 2 individuals. Three Indian, one State, and one State/Indian association commenter generally supported the definition as written. The remaining 38 respondents, who made up the majority of commenters, disagreed with the proposed definition.

Three Indian, one State, and one State/Indian association commenter supported the definition and urged MMS to retain the entitlement concept despite pressures to the contrary. One Indian commenter suggested using the words "accrued or accruing to" in place of "entitled." A State commenter stated that "MMS has correctly resisted lessee efforts to exclude the royalty owner from sharing in some kinds of consideration, such as severance tax reimbursement and take or pay payments." This commenter recommended clarifying the first sentence by amending it as follows: "Gross proceeds (for royalty purposes) means the total monies and *the value of* other consideration paid *or given* to [an oil] and gas lessee, or monies and *the value of* other considerations to which such lessee is entitled, for the disposition of gas." The commenter stated that "These additions are necessary because when 'consideration' is not in the form of 'monies' it is necessary to determine its value."

Twenty industry commenters opposed the definition of "gross proceeds" as proposed because it is too expansive and contrary to the provisions of the Mineral Lands Leasing Act and the OCS Lands Act. Instead, they propose the following: "Gross proceeds (for royalty payment purposes) means the consideration accrued to the lessee for production removed or sold from Federal, Indian Tribal or Indian allotted leases." One commenter stated further that "Such definition is unambiguous, furthering the MMS's desire for certainty

in its regulations. Reimbursement for production-related costs and take-or-pay payments are currently being litigated. If it is eventually determined that royalty is owed on such payments such definition will not have to be modified. On the other hand, the proposed definition will have to be amended if industry is successful in its claims that royalty is not due on such amounts." One industry commenter proposed adopting the definition of "gross proceeds" endorsed by a majority of the RMAC Gas Panel. It reads: "* * * all consideration due and payable to the lessee for the sale of gas and processed gas products, less any applicable allowances for transportation, processing and other post production expenses."

Seventeen industry commenters disagreed with the entitlement language contained in the definition. Their concerns are represented by the following statement from one of the comments: "Proceeds have long been defined and understood to mean the consideration, money or the monetary equivalent of other non-monetary consideration *actually received by a lessee*. MMS' expansive definition of proceeds, including monies to which a lessee is *entitled*, makes product valuation uncertain and subjective. This uncertainty and subjectivity arises because: (1) The meaning of entitlement is not clearly understood, nor is it a clearly defined legal term; (2) lessees do not know how either they or MMS will, or should, apply this standard; and (3) the required steps which a lessee must take to secure entitlements to consideration are unknown. It will put MMS into the business of second guessing lessee's business transactions. To minimize this second guessing problem of uncertainty we recommend the concept of entitlement be eliminated from further consideration." One industry commenter was concerned that "a lessee would be required to pay royalties on monies to which it is entitled, not on what is received or on what is settled for as a matter of compromise." In order to add more certainty to the concept of "entitlement," one commenter suggested "a simple statement to the effect that MMS expects to be indemnified against the negative consequences of a lessee sleeping on its *clear cut* uncontested contract rights should suffice."

Fourteen industry commenters had the opinion, as one commenter phrased it, that "Federal statutes, regulations, and leases do not require lessees to pay royalty on reimbursements received for post-production services." Several commenters believed that "the claim for royalty on production-related cost reimbursements received by a lessee pursuant to the FERC's Order No. 94 series is particularly inappropriate." One commenter stated that "a demand for royalties on Order No. 94 violates the royalty clause of the MLA, the OCSLA, as well as MMS's own regulations implementing these statutes, for at least two reasons. First these reimbursements do not result from the production of gas but from services performed by the producer subsequent to production. Secondly, such reimbursements are not consideration for production that is sold or removed and are thus outside the scope of the royalty clause. Consequently, the MMS proposal to include production-related cost reimbursements in the definition of gross proceeds is simply wrong." Another industry commenter "strongly asserts the producer's right to deduct all post-production costs involved in marketing gas. Further tax reimbursements should be exempt from royalty." Finally, one industry commenter stated that "all post-production costs should be shared by lessor and lessee because such costs enhance the value of the production for the benefit of both lessor and lessee."

Seventeen industry and two individual commenters responded to the inclusion of take-or-pay payments in the definition of "gross proceeds." The consensus among these commenters is that MMS has no lawful reason or authorization to collect royalties on take-or-pay payments. One commenter stated that "the typical take-or-pay clause in a contract between the lessee and the gas purchaser requires the purchaser to pay for the specified minimum quantity of gas for each contract year. Whenever the gas purchaser takes less than the contract minimum for a particular year, the purchaser is required to make a take-or-pay payment to the lessee. The purpose of take-or-pay payments is to guarantee the lessee a steady cash flow, regardless of the level of actual production, to meet its operation and maintenance costs. The payments are not for production; indeed, they are made in lieu of taking production. Consequently, to the extent the lessee receives take-or-pay payments there is no gas production or sale because the gas remains in the ground."

Several industry commenters recommended the increased use of "in-kind" royalty clauses to resolve good faith royalty disputes. One industry commenter stated "indeed, the 'in-kind standard should be considered as the measure of product 'value,' where a producer and the MMS, or a State auditor under a delegation of authority, disagree over whether a contract is 'arm's-length,' or over contract 'entitlements,' the gas should be taken 'in-kind, by volume at the wellhead. This means that the royalty owner must assume all subsequent costs of marketing the gas."

MMS Response: MMS has adopted a definition which is only slightly different than the proposal for purposes of clarification. MMS has retained the intent of the proposed language because gross proceeds to which a lessee is "entitled" means those prices and/or benefits to which it is legally entitled under the terms of the contract. If a lessee fails to take proper or timely action to receive prices or benefits to which it is entitled under the contract, it must pay royalty at a value based upon that legally obtainable price or benefit, unless the contract is amended or revised. As is discussed more fully below, gross proceeds under arm's-length contracts are a principal determinant of value. MMS cannot adopt that standard and then not require lessees to pay royalties in accordance with the express terms of those contracts. It is MMS's intent that the definition be expansive to include all consideration flowing from the buyer to the seller for the gas, whether that consideration is in the form of money or any other form of value. Lessees cannot avoid their royalty obligations by keeping a part of their agreement outside the four corners of the contract.

Costs of production and post-production costs are lease obligations which the lessee must perform at no cost to the Federal Government or Indian owner. The services listed in the definition are all benefits that a lessee may receive under the terms of the contract and are considered part of the value for royalty purposes for the production removed or sold from the lease.

It is MMS's position that take-or-pay payments are part of the gross proceeds accruing to a lessee upon which royalty is due.

The MMS retains the exclusive right to determine when it will accept "in kind" production in fulfillment of a lessee's royalty obligation.

"Lease"—One Indian commenter stated the following: "Inclusion of any contract profit-sharing arrangement, joint venture or other agreement in the term lease' as opposed to a more standardized BIA form lease may cause confusion. Most joint ventures and profit-sharing arrangements contain

explicit provisions on payment of expenses and division of revenues."

MMS Response: This definition must be broad enough to cover any agreement that may be issued or approved by the United States for either Federal or Indian lands.

"Lease products"—One industry commenter stated: "Lease products definition should be deleted as it eliminates the important and necessary distinction between raw gas and manufactured products. Use of the phrases 'gas' and 'gas plant products' is preferable as it serves to make this distinction."

MMS Response: The MMS believes that this definition is appropriate and correct and does not eliminate any distinction between raw gas and manufactured products. The definition of the terms "gas" and "gas plant products" will be retained in the definitions paragraph.

"Lessee"—Fifteen industry/trade groups commented that the proposed definition of "lessee" is too broad. One commenter stated that "As drafted, it would include any person who pays royalties, notwithstanding the fact that such payors may have no contractual obligation to the lessor to make royalty payments. Thus, under the proposed definition, the voluntary royalty remitter would become subject to all of the royalty valuation obligations imposed on lessees and would consequently, become directly liable for any infractions of the application reporting and payment regulations, a result which is not sanctioned by existing statutory law. To be consistent with that law, industry suggests that MMS substitute for its definition of "lessee" the one which is contained in section 3(7) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1702(7):

> "Lessee" means any person to whom the United States, an Indian Tribe, or an Indian allottee, issues a lease, or any person who has been assigned an obligation to make royalty or other payments required by the lease."

Most of these commenters favored this definition because "the statutory definition includes persons who have been issued a lease or who have been *assigned* an obligation to make royalty or other payments required by the lease. The gas proposal would wrongfully expand the definition to include any person who has *assumed* an obligation to make such payments."

One industry commenter recommended adding the phrase "for royalty payment purposes" directly after the word "Lessee" for the purpose of clarity. "We do not believe it is the intent of Congress that a lessee be able to divest himself of all lease obligations by someone else merely assuming royalty responsibility."

MMS Response: The MMS agrees with the comments regarding consistency with the definition found in FOGRMA and, therefore, has replaced the word "assumed" with the word "assigned." It should be specifically noted that the term "assigned," as used in this Part, is restricted to the assignment of an obligation to make royalty or other payments required by the lease. It is in no way related to lease "assignments" approved through the MMS, BLM or BIA.

"Marketable Condition"—One industry commenter suggested changing the definition to "Marketable Condition means condition acceptable to the purchaser under its sales contract."

One industry commenter suggested adding the words *"and/or transporter"* after the word "purchaser" in the definition.

One industry commenter stated that phrases such as "sufficiently free from impurities" and "a contract typical for the field or area" are subjective and ambiguous. The commenter stated that "All references to 'marketable condition' should be dropped in the final regulations. Instead, the regulations should reflect the distinction between production and post-production costs and clearly allow the lessee with an arm's-length contract to deduct post-production costs."

One industry commenter stated that "The proposed definition of 'marketable condition' is problematic because it seems to set up a normative standard for the condition of a product, when in fact products may be sold profitably in a variety of conditions. We do not believe the lessee should be required to meet a specific set of processing criteria in all circumstances. The lessee, for its own profit and for that of its lessor, must be able to evaluate potential benefits and costs under each circumstance without being bound by what the lessor may consider 'typical' for the field or area. Furthermore, as regard the term 'typical', what was typical 20 years ago almost certainly is not typical now; yet there is no reference in this definition to the need for contracts to be fairly contemporaneous in order to be comparable. The definition set forth in the report of RMAC's Gas Working Panel is far preferable to the proposed rule."

MMS Response: The MMS believes that the definition is clear, concise, and equitable. The definition is not subject to manipulation, as one commenter stated. Furthermore, the suggestion that a uniform standard be developed for what is "marketable" is unrealistic because the gas marketplace is dynamic. The definition, as written, allows MMS the latitude to apply the concept of "marketable" in a fair and correct manner, now and in future gas markets. Therefore, the MMS has not made any changes to the proposed definition.

"Net-back Method"—One industry commenter recommended deleting the second sentence of the definition because the procedure for performing a net-back calculation cannot be adequately explained in one sentence. Another industry commenter believed that the reference to net-back method needs clarification. A net-back is simply a means for reconstructing the value of gas to the well and has nothing to do with valuing the disposition of the gas at a point remote from the well. Consequently, a net-back procedure can be employed simultaneously with another valuation criterion to arrive at the value at the well."

One industry commenter stated the following about the definition: "It is vague because there is no explanation of what 'working back' means; it is overly broad because the first 'use' of virtually all gas is downstream from the lease. In addition, exclusive reliance on costs, however 'costs' are determined, may well understate the value added to production by downstream value-enhancement activities."

One State commenter stated that "the definition is internally inconsistent because it declares the 'net-back method to be a method for valuing 'unprocessed gas' which is first sold downstream of, among other things, 'processing plants.' One of these references must be deleted to preserve consistency. The concept is vague because no standard is provided for determining what is meant by the phrase 'first alternative point which can be used for value determination.' "

MMS Response: Upon review, MMS determined that the proposed definition of net-back was too broad—it applied to any situation where lease production is sold at a point remote from the lease. MMS's intent is that a net-back method be used for valuation primarily where the form of the lease product has changed, and it is necessary to start with the sales prices of the changed product and deduct transportation and processing costs. An example would be where gas production from a Federal lease is used on lease to generate electricity which is then sold. If the value of the gas cannot be determined through application of the first three benchmarks in the regulations (see

§ 206.152(c)), then a net-back method would involve beginning with the sale price of the electricity and deducting the costs of generation and transportation, thus working back to a value at the lease. MMS has revised the definition so it more clearly applies to this type of situation.

"Net Output"—One industry commenter recommends "substituting the phrase 'actually extracts' for 'produces'. Net output of a plant is that which is *actually extracted*, not theoretically extractable."

MMS Response: The MMS disagrees with the commenter's recommended addition. The phrase "actually extracts" could be interpreted as meaning something different than "is produced."

"Person"—One industry commenter recommended replacing the word "firm" with "company" in the interest of clarity.

Three industry commenters expressed the opinion that if the definition is not altered "then inclusion of joint venture in the definition of person could be extended to oil and gas joint venture operations and further narrow the definition of an arm's-length transaction by clouding the issues of control and affiliation. The sale of hydrocarbons produced through joint venture operations should not be presumed to be other than arm's-length because the individual parties and not the 'joint venture' are responsible for making their own sales of their share of the production." One industry commenter stated that the solution to the problem is to delete the term "joint venture" from the definition. Another industry commenter proposed the following definition: "Person means any individual, firm, corporation, association, partnership, consortium, or joint venture. For purposes of this definition, association, partnership, consortium or joint venture shall not include any relationship or arrangement resulting from persons entering into any joint operating agreement, production sharing agreement, farm-out or farm-in agreement, or any similar agreement or contracts generally found in the oil and gas industry for the cooperative exploration of mineral resources."

MMS Response: MMS's modification to the definition of arm's-length contract to include the "control" language should satisfy the problems identified in the comments. Therefore, MMS will retain the proposed definition of "person" in the final rule.

"Posted Price"—One industry commenter stated that the word "posted" is an outdated term which should be deleted and that the following underlined language should be added to the definition. "Posted price means the price in the field, net of all deductions, as specified in a publicly available * * * price bulletin *or price notices available as part of normal business operations to an operator desiring to do business with specific purchasers*, that a buyer is willing to pay for quantities of unprocessed gas, residue gas, or gas plant products of marketable condition * * *." The commenter also stated that, "if gas price bulletins become generally circulated, it may be that some buyers may not publish a price bulletin as that term is normally used in the industry, but will provide and make available price quotations or notices to any operator (seller) desiring to do business with the buyer."

MMS Response: The MMS has revised the definition in the final rule. For clarification purposes, the word "condition" replaces the word "quality" which follows the word "marketable" in the first sentence. The phrase "net of all deductions" has been modified to read "net of all adjustments." As used in this definition, the term "adjustments" refers to deductions from the price of gas or gas plant products for quality adjustments. Adjustments for location also may be taken into account where appropriate.

"Processing"—Two industry commenters recommended "that a clarifying statement be included to recognize that a plant may be located on the lessee's Federal/Indian lease. If a gas plant is located on a lease, then any of the 'field processes', as set out in the definition may well be an integral part of the plant process and consequently must be considered elements of processing." One industry commenter suggested that the following sentence be inserted between the proposed second and third sentences: "However, these processes will be considered as processing if they are included as an inherent part of the process to separate the produced gas into gas plant products and residue gas." Two industry commenters recommended "The addition of the word 'fractionation' at the end of the first sentence. Fractionation is a plant process and an allowance should be granted as is currently allowed by MMS."

One Federal agency commenter stated that some confusion may arise when comparing proposed § 206.151(bb) to proposed § 206.158(d). "Once the gas reaches the gas plant it would be arguable that any process associated with treating the gas, such as dehydration or mechanical separation, is generating a gas plant product that would be eligible for a processing cost deduction."

One industry commenter suggested changing the definition of "processing" to: "*'Manufacturing:'* The transformation of a raw gas stream into one or more saleable products by processes other than dehydration, standard field conditioning and separation techniques. Manufacturing includes gas processing, sweetening, purification, desulfurization, gas separation, adsorption, absorption, liquefaction and other extraction techniques. Furthermore, gas processing should be defined as: *Gas Processing:* The manufacturing technique whereby wet gas is treated to remove natural gas liquids such that the natural gas liquids and dry residue gas are separately marketable." This commenter thinks that "manufacturing also includes the physical operation attendant to the specific manufacturing process such as the dehydration and compression steps which occur within a gas plant. The MMS has instead attempted to limit its attention to 'gas processing' and thus provides an allowance only to such operations. The position of the MMS is based upon a clear misapplication of the *Udall* case, namely, that all operations for placing gas in marketable condition, *including manufacturing operations*, are not deductible. Compounding its error, the MMS ignores the *General Petroleum* holding, not affected by *Udall*, that residue gas is a manufactured product, and so proposes that no manufacturing cost be deducted against the residue gas."

One State commenter stated that the definition of "processing" is very vague. According to this commenter, the distinction between "field processing" and other "processing" is not clearly drawn. The commenter asserted that "The ambiguity of the definition of 'processing' would not be so troubling except for the fact that it seems to control the meaning of the term 'unprocessed gas,' which is not defined in the proposed regulations despite its critical importance. One would think that regulations aimed at providing certainty would present clear guidelines for identifying the 'processing' costs in which the royalty owner must share."

MMS Response: The MMS has considered the comments carefully but disagrees that the proposed definition is confusing and vague. Therefore, it will be retained unchanged in the final rule.

"Residue Gas"—One industry commenter suggested that "Residue gas may also include ethane." Another industry commenter recommends deleting this definition but states:

"Nevertheless, if this definition is maintained residue gas should be restricted to residue gas resulting from processing sweet gas containing hydrocarbons."

MMS Response: The MMS has not adopted the suggestions made by the commenters and the definition remains unchanged. The definition recognizes that residue gas may include ethane.

"Spot Sales"—One industry commenter suggested deleting all language in the proposed definition that follows the word "duration." According to this commenter, "The additional language is not necessary to define a spot sales agreement as it defines what is *not* required, versus what *is* required."

One industry commenter suggested deleting the clause "* * * which does not require a cancellation notice to terminate * * *" "Many spot sales agreements require ten (10), thirty (30), or sixty (60) days notices of cancellation * * *. The MMS purpose of including only those contracts which do not imply an intent to continue in subsequent periods is adequately served by the balance of the definition."

Three industry/trade group commenters recommended that this paragraph should be retitled as " 'spot/direct sales agreements' and a definition for direct sales be added as follows: A direct sale (which generally does not contain a reserve dedication) is a similar agreement but is usually made with an end user or local distribution company *and can be a short or long term contract.*"

One industry commenter recommended adding the following sentence to the definition: "A spot or direct sale which meets all of the criteria of an arm's-length contract as defined in paragraph 206.151(d) of these regulations shall be treated as an arm's-length contract according to these regulations." The commenter believes that the proposed definition must clearly state that a spot sales agreement will be treated as arm's-length if it meets all the requirements of an arm's-length agreement.

MMS Response: In the final rule, MMS has inserted the word "normally" immediately preceding the phrase "require a cancellation notice to terminate." MMS also agrees that there are spot sales which constitute arm's-length contracts. However, to be considered as a comparable arm's-length contract in the valuation of gas which is not sold pursuant to an arm's-length contract, these contracts also must meet other standards. See, for example, § 206.152(c)(1).

"Take-or-pay payment"—Four industry comments were received on this definition and all recommended its deletion. The comments are reflected by the following statement of one of the commenters: "While the definition proposed is technically correct, it should be deleted from the proposed rule because, as stated in the discussion of § 206.151(m) above, take-or-pay payments are not consideration for the sale of production."

MMS Response: MMS is retaining the definition as proposed, with minor modification. MMS already addressed above the issue of whether take-or-pay payments should be included in gross proceeds.

"Warranty Contract"—One industry commenter stated that "the exclusion of warranty contracts from the valuation of gross proceeds under an arm's-length contract is intended to exclude those low value warranty contracts that were entered into prior to the mid 1970's. However, the proposed definition is so broad that it will encompass future negotiated selling arrangements." To clearly express the MMS's intent, the commenter "proposes that the definition be restricted to those contracts entered into before a specific date."

MMS Response: The MMS has modified the definition to refer only to long-term contracts entered into prior to 1970. This also includes contracts entered into prior to 1970 that may have been amended either before or after 1970.

Proposed New Definitions

Commenters have proposed adding the following definitions to the list of existing definitions: Natural gas liquids; post-production costs; production; production costs; royalty; and unavoidably lost gas.

MMS Response: The MMS has decided not to include any of the suggested additional definitions. The terms either have a recognized meaning (such as "royalty") or are not used in the regulations (such as "post-production costs").

Section 206.152 Valuation standards—unprocessed gas.

Section 206.152(a)

Paragraph (a)(1) provides that the provisions of § 206.152 apply only to gas that is sold or otherwise disposed of by the lessee pursuant to an arm's-length contract prior to processing. The section expressly does not apply to contracts where the lessee reserves the right to process the gas or to percent of proceeds contracts. Four industry commenters stated that the proposal to exclude percent of proceeds contracts from this section is unreasonable and unfair to the lessee. They stated that the percentage of proceeds mechanism is a means of arriving at the wellhead value and is not a sale of processed gas. All commenters recommended classifying percent of proceeds contracts under unprocessed gas.

MMS Response: The MMS still believes that the percentage of proceeds contracts should be treated as processed gas as proposed. However, because the final rule includes provisions for an exception from processing allowance limitations (see § 206.158(c)(3)), many of the commenters concerns should be resolved.

An Indian commenter stated that this section is inconsistent with the ruling in *Jicarilla Apache Tribe v. Supron,* which held that under the terms of the Indian leases in dispute, wet gas had to be valued as the higher of the value at the lease or as the value of all products at the tailgate of the plant, less transportation and processing costs.

MMS Response: The MMS s regulations recognize the primacy of statutes, treaties, and oil and gas leases, thus providing a means for determining special valuation requirements not only for Indian leases, but also for Federal leases. Many Indian leases have provisions that require dual accounting for processed Indian gas production.

Section 206.152(a)(2)

One Indian commenter stated that this proposed rule authorizes alterations in dealings between the Indian lessor and the industry lessee. The commenter further stated that this provision will result in royalties which are adjusted for transportation costs not contemplated by either party to the lease. The commenter recommended that all references to transportation allowances be deleted and that value be defined, for royalty purposes, to be the fair market value of the gas at the lease in marketable condition.

One industry commenter objected to the concept of determining royalty on the value of gas and the associated products after completion of the manufacturing or processing phase. The commenter recommended that royalty be due only on the market value of the product as it is produced at the wellhead.

Three Industry commenters recommended that the phrase "less applicable transportation" should be expanded to include other cost allowances such as production costs.

MMS Response: The MMS has modified the final rule to refer to "applicable allowances" because the final rule includes provisions for limited

extraordinary cost allowances in addition to transportation allowances. In response to the comments, transportation allowances generally are appropriate for most Indian leases. The regulation refers to "applicable" allowances and does not imply that any and all transportation costs can be deducted. If transportation allowances are not appropriate, the word "applicable" restricts application only to those leases where they can be applied.

The MMS is including in the final rule a new paragraph (b)(3) which states that for any Indian leases which provide that the Secretary may consider the highest price paid or offered for a major portion (major portion) in determining value, MMS will, where data are available and where it is practicable, compare the value determined in accordance with the prescribed standards with the major portion. The rule provides that the royalty value for royalty purposes generally will be the higher of those two values. However, if MMS determines that the major portion results in an unreasonably high value, then it will not be used for royalty purposes. This could happen, for example, in a falling market where a seller under an arm's-length contract is marketed out to a lower price. If that price is truly the result of an arm's-length process and is lower than the major portion, MMS could conclude that the arm's-length price is the highest reasonable value for royalty purposes.

The MMS is also including in paragraph (b)(3) a description of how the major portion is computed. It will be determined using like quality gas, which includes legal characteristics (i.e., same NGPA category). The production will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent (by volume) plus one Mcf of the gas (starting from the bottom up) is sold.

The MMS believes that for these Indian leases, by comparing the major portion to values determined using arm's-length contract prices or the benchmarks for non-arm's-length contracts, and generally using the higher of the two, the Indians will be receiving royalties in accordance with their contract with the lessee.

Section 206.152(b)

Seven industry commenters stated that they supported the concept of relying on gross proceeds in an arm's-length transaction as the principal determinant of value. Two industry commenters also endorsed the overall approach to valuation determination procedures and eliminating the requirement that a lessee obtain preapproval.

MMS Response: The MMS believes that gross proceeds under an arm's-length contract generally constitute the market value of a commodity, but this does not preclude MMS from establishing a value where necessary; e.g., if the contract is not an arm's-length contract or if the lease agreement requires a different value.

One Indian commenter recommended that a definition of gas value, for royalty purposes, be based on the highest price paid or offered for similar gas in the same field or area, and requested MMS to adopt the following approach:

Section 206.102 (sic) Valuation Standards.

(a) Remains the same.

(b) The value of gas which is sold pursuant to a contract shall be the gross proceeds accruing, or which could accrue, to the lessee, *Provided that* such proceeds do not fall more than 10 percent below the greater of the highest price paid or posted for similar gas in the same field or area. If such proceeds fall more than 10 percent below such prices, the value of gas in that case shall be 10 percent below the greater of the highest price paid or posted for similar gas in the same field or area.

A State commenter stated that the proposed regulations would allow substantial manipulation and undervaluation of the royalty amount because it is unacceptable to allow lessees to use contract prices as the royalty value without adequate safeguards to assure a fair valuation. They recommended at a minimum, only prices under "genuine" arm's-length contracts should be acceptable for royalty purposes and urged MMS at least to impose a floor value, such as 80 percent of the value of production as determined under the "value" criteria applicable to gas not sold under arm's-length contracts.

MMS Response: The MMS generally does not believe that the establishment of some type of "floor value" (other than gross proceeds) is appropriate because it could result in royalty being based on a value greater than the lessee received under an arm's-length contract. However, under the lease and regulations, MMS has the authority to establish a value, for royalty purposes, and will do so where it is justified for non-arm's-length contracts, even if such value is higher than the gross proceeds received by the lessee. Also, as explained above, for most Indian leases, because of the specific lease terms, MMS will compare values determined using arm's-length contract prices with the highest price paid for a major portion of production, and generally use the higher of the two values.

One Indian commenter recommended the inclusion of provisions specifically reserving to MMS the right to review and audit "arm's-length" contracts and that the proceeds under all contracts should be subject to price checks—market value analysis—before being accepted as value. Another Indian commenter requested that all arm's-length contracts be filed with MMS and that MMS require that agreements for the sale or disposition of gas within different branches of the same company be in writing and on file.

One Indian commenter stated that "if MMS is to properly undertake its responsibilities, a predetermination of value on which royalty is to be based should be made *before* production value is reported." In addition, it was recommended that the Secretary should determine whether each contract is arm's-length or non-arm's-length instead of allowing the lessee to make this determination. Also, it was suggested by that the Secretary should have all benchmarks available to him and MMS should have the flexibility to set benchmark minimum prices established by the highest price paid or offered for a major portion of gas produced from the field or area.

MMS Response: The suggestions to predetermine the value on which royalty is to be based were not adopted because of the increase in administrative burden which would be very costly for MMS and industry. The MMS assumes that operators will make a diligent effort to comply fully with the regulations, and, therefore, will not identify an internal sales agreement as arm's-length. The suggestion that the Secretary should determine whether each contract is arm's-length or non-arm's-length instead of allowing the lessee to make this determination is not considered necessary. However, the MMS has added a provision to the final rule which provides that MMS will determine during audits whether the lessee's contract reflects all the consideration transferred either directly or indirectly from the buyer to the seller for the gas, or whether there may be factors which would cause the contract not to be deemed arm's-length. MMS recognizes that some parties may have multiple contracts with one another. This fact alone would not cause a contract to be considered non-arm's-length. Rather, there must be some indication that the contract in question does not reflect the full agreement between the parties. The final regulations also include a provision whereby MMS may require a lessee to certify that the terms of its arm's-length contract reflect all the consideration

flowing from the buyer to the seller for the gas.

One individual commenter stated that the courts and industry have both acknowledged that a royalty based on value is different from one based on proceeds and that the majority rule in State courts is that gas is to be valued at the time of production or delivery, not at the time of entering into the contract.

MMS Response: The MMS will generally accept the gross proceeds received under an arm's-length contract as the value. The usual lease provisions do not preclude the acceptance of gross proceeds under an arm's-length contract as the proper value. In fact, under most Indian leases gross proceeds may be accepted as conclusive evidence of value. If a particular contract is not an arm's-length contract, production will be valued in accordance with the benchmarks. And, as discussed above, for Indian leases MMS will also consider the major portion in determining the royalty value.

Section 206.152(b)(2) of the proposed rules excepted warranty contracts from the general acceptance of gross proceeds as value for arm's-length contracts. One industry commenter recommended that advance MMS approval not be required for the value of gas sold pursuant to a warranty contract since all activities are subject to audit.

Two industry commenters stated that this section should be deleted and that the gross proceeds received by the producer under a warranty contract should be used for determining royalty just as it is for other arm's-length contracts.

Two industry commenters recommended that MMS consider limiting the warranty contracts exception to those contracts entered into before a specific date, such as prior to the mid-1970 s.

MMS Response: The MMS has adopted the rule that the value of gas sold pursuant to a warranty contract will be determined by MMS. The issue of limiting the definition of warranty contracts to those executed prior to 1970 was discussed above in the definition of warranty contract.

Twenty-three industry commenters strongly disagreed with the language "or which could accrue" contained throughout the regulations. Most companies recommended that the language be deleted. Most commenters stated that the language was too speculative and appears to provide for a second-guess mechanism under which a lessee's sale today can be reviewed in light of knowledge gained at a later date.

MMS Response: The MMS has determined that the phrase "or which could accrue" will be deleted in reference to gross proceeds. Many commenters thought that this phrase would allow MMS to second guess the price which the lessee agreed to in its contract by arguing that other persons selling gas may have received higher prices—thus, more proceeds "could have accrued" to the lessee. This was not MMS's purpose in including the "or which could accrue" language in the proposed rule. Rather, MMS's intent is to ensure that royalties are paid on the full amount to which the lessee is entitled under its contract, not just on the amount of money it may actually receive from its purchaser. However, MMS is satisfied that the phrase "the gross proceeds accruing to the lessee" properly includes all consideration to which the lessee is entitled under its contract, not necessarily just what it actually receives from the buyer. Therefore, the "or which could accrue" phrase was unnecessary. Because it caused confusion as to MMS's intent, it was deleted from the final rule.

One Indian commenter stated that "acceptance of gross proceeds as conclusive evidence of value is an abrogation of the Secretary's fiduciary duties, " and that they do not believe "gross proceeds accruing or which could have accrued in an arm's-length transaction should be determinative of value for gas produced from Indian and Federal leases."

MMS Response: MMS believes that the rules as adopted with the changes discussed earlier will result in reasonable and appropriate values for Indian leases, in accordance with the Secretary's responsibilities.

Section 206.152(c)

Gas which is not sold pursuant to an arm's-length contract is required by the regulations to be valued in accordance with a series of benchmarks. Four State, three Indian, two industry, and one Federal agency commenter disagree with various aspects of the proposed benchmark system because they think that it is overly vague and subjective. Two State commenters stated that because the majority of gas contracts are not arm's-length, the benchmark system proposed by MMS may be too complex. They recommend that "* * * MMS should study the numerous pricing provisions related to gas sales, and on the basis of the study establish Federal floor values which could be used by lessees to compute a minimum royalty and which would be publicly available."

One State commenter believes that the appropriateness of using the benchmark system depends upon whether the benchmarks are fair and reliable. According to this commenter, "The proposed system would not be fair to the royalty owner because it would lead to the potential for abuse and would certainly result in the diminution of royalties. It would be unreliable because the standards are vague, subjective, and subject to abuse. Unlike the proposed benchmarks for oil valuation, we do not believe that the proposed gas valuation benchmarks can be developed into a fair and workable system. Instead, we believe all the factors listed in paragraphs (c)(1) through (c)(4) should be combined into a single valuation standard." One industry commenter stated that although the proposed benchmark system gives producers more confidence in arriving at value, it falls short of providing a method to determine an exact royalty amount when royalty is due.

Fourteen industry and/or trade groups and one Indian trade group, with minor changes, support the benchmarks and giving them priorities because both will add certainty to valuation determinations. They commend MMS for the recognition of market forces as the principal determinant of value. One commenter stated that "The truest representation of the value of a product is what it can be sold for on the open market, at arm's-length. The proposed benchmarks for valuation of gas under arm's-length contract, non-arm's-length contract, and no contract transactions promote accurate valuation according to the marketplace, and provide rational standards for MMS to follow in monitoring establishment of gas value."

MMS Response: The MMS believes that the proposed benchmark system is a valid and usable system for determining the value of gas not sold pursuant to an arm's-length contract. The system allows the lessee certainty in determining its own value without dependence upon MMS to establish the value. The MMS believes that the majority of gas contracts, if not arm's-length, will be valued according to either the first or second benchmarks. The suggestion that MMS develop Federal floor values is not feasible and would be difficult to administer. Therefore, other than some minor modifications, the benchmarks have been adopted as proposed.

Two commenters disagreed with the way in which the benchmarks were ordered in the proposed regulations. One Federal agency commenter suggested that the second valuation criterion be utilized before the first because it appears to provide a more

objective method of valuing gas than does the first. One State commenter stated that the courts have accepted the net-back method as proper for determining value. They believe that since the net-back method is the last criterion in the benchmark system and cannot be used if any of the preceeding criteria have been used, for all practical purposes it has been made unavailable.

MMS Response: The MMS believes that the proposed ordering of the benchmarks is correct and equitable to both the lessee and lessor. The MMS agrees that the net-back method will not be used frequently. The net-back analysis should only be used where less complex procedures are not feasible. For purposes of this section, MMS does not consider a situation where either transportation or processing allowances are deducted from an arm's-length delivered sales price for gas as a net-back. Such procedures will typically be used for royalty valuation. See the discussion of the net-back method above.

Three Indian commenters stated that MMS's failure to recognize its obligation to maximize tribal royalties is evidenced in the proposed benchmark system. One commenter stated that "MMS, however, relies on lessee-generated information for that determination and, moreover, relies upon the truthfulness of that information. For example, under alternative number one, MMS proposes to look at the lessee's comparable contracts in the same field or area, notwithstanding possible underselling during the same period. Plainly, this benchmark is so riddled with potential conflicts of interest that it cannot possibly be urged as consistent with the Federal fiduciary duty to maximize Indian oil and gas resources." Another commenter stated that the proposed benchmark system is based on the premise that gross proceeds represents market value and "Gross proceeds have always been considered as the minimum value of production because it has long been recognized that price does not always indicate value. The proposed benchmarks appear to treat gross proceeds as the maximum value." This commenter "believes that gas production should be valued at the highest price posted or paid in the field regardless of whether the contract is arm's-length or non-arm's-length * * *." Finally, one Indian commenter stated that "The lease provisions should prevail and should require the Secretary to formulate and implement procedures for the majority portion analysis. These provisions of the regulations should include a statement which indicates that it will not be applied to Indian Tribal and allottee leases. If however, these provisions will be applied to Indian tribal and allottee leases, then each benchmark should be considered a reasonable option that the Secretary can utilize to determine value and the Secretary should use the reasonable option which brings the highest revenue to the Indian Tribe or allottee."

MMS Response: The MMS believes that the regulations adopted will permit the Secretary to discharge his responsibilities to the Tribes and allottees because the gross proceeds to which the lessee is entitled for the sale of gas under an arm's-length contract does constitute market value. "Arm's-length" sales will not be accepted without question. The MMS may need to obtain information to ascertain that they are truly arm's-length as defined in the regulations. The requirement that royalty be based on the highest price in the field or area could result in royalty being assessed on a value far higher than the lessee has received under an arm's-length contract. The MMS believes that this additional obligation should not be imposed except in specific cases where the lease terms, oil and gas statutes, or a treaty may specify that value be based on a higher price, or when it is determined that the lessee does not have a valid arm's-length contract.

One industry commenter recommended that "the last benchmark of net-back pricing be eliminated from the list because we believe that it would not be routinely used and would be administratively impractical to implement. The reference to any other reasonable method to determine value should be retained."

MMS Response: The MMS disagrees that the net-back method should be deleted. The net-back method is a viable valuation procedure, even though it will not be routinely used.

One industry commenter stated that "* * * depending upon how one treats 'spot sales', the hierarchy of measures which they establish could result in a substitution of a poorer measure for one that represents the best measure of gas value." This commenter recommended placing spot-sale agreements higher in the hierarchy of benchmarks.

MMS Response: The MMS believes that the position of "spot sales" in the benchmark system is appropriate. The first two benchmarks are a better measure of establishing value for royalty purposes than spot sales. The rule has been modified to reference "arm's-length" spot sales.

One industry commenter suggests that the wording of the criteria should be amended to avoid ambiguity in their application: "As currently written, these provisions are unclear as to how royalty should be valued if the proceeds under the non-arm's-length contract is not 'equivalent' to the proceeds of the lessee's arm's-length contracts (first criterion) or the arm's-length contracts of other lessees in the field (second criterion)." This commenter "* * * understands the intent of the proposed regulations is that the proceeds under the referenced arm's-length contracts would be used to set royalties, but the regulation does not expressly so state. Indeed, as presently worded, the regulation would suggest that if the non-arm's-length contract was not 'equivalent', then the next criterion in the hierarchy would apply. This ambiguity should be removed."

MMS Response: The MMS disagrees that these provisions are unclear. Under the benchmark system, value will be determined through application of criteria in a prescribed order. In other words, the second criterion would not be considered unless the first criterion could not be reasonably applied. Therefore, if the lessee's proceeds under its arm's-length contracts are not "equivalent" to the non-arm's-length contract, then the first benchmark does not apply and the lessee should try to apply the second benchmark. If that one also does not apply, then the lessee should try to apply the third benchmark, and so on.

One industry commenter stated that "for making comparisons to arm's-length contracts, when the producer is selling gas to an affiliate and that affiliate is also purchasing gas in the same field or area under an arm's-length contract, the marketing experiences of the parties to the arm's-length contract should be a primary consideration (not just of the volume of gas sold for example). If the producer under a comparable arm's-length contract is active in the marketplace, it is only reasonable that he would neither accept less nor pay more than the market price for gas. In addition, larger volumes of gas do not always attract a better price than a smaller volume. In some cases, the larger volume is harder to move because it has to be sold in pieces."

MMS Response: The rules, as adopted, require that there be numerous factors considered before an arm's-length contract could be deemed comparable. The purpose for consideration of these factors is to prevent abuses through application of only a few factors such that contracts

containing unusually low or high prices could be used.

One industry commenter suggested "an alteration to the proposed regulations under §§ 206.152 and 206.153 to validate any intracompany or affiliate intercompany 'sale', if that transaction is monitored by a regulatory body to determine the market responsiveness of the transaction. Specifically, the commenter suggests that MMS's proposed regulations recognize the FERC's right to determine the justness and reasonableness of (producer) 'first sale' market rates, where those costs are 'passed on' to interstate pipeline sale-for-resale customers via Purchased Gas Cost Adjustment Clauses filed by interstate pipelines as part of their FERC Gas Tariff."

MMS Response: The MMS and FERC have different statutory responsibilities. It is MMS's responsibility to determine the value of production from Federal and Indian leases. Although FERC's actions may be one criterion to consider in determining value, MMS cannot accept them as conclusive.

One industry commenter stated that under the benchmark system it is difficult for an affiliated producer to prove its determination of value, especially with respect to those properties it does not operate. According to this commenter, "The MMS is in the unique position of having access to data, facts, and information that are not readily available to an individual producer. Indeed, attempts to gather such information might violate antitrust laws. Without access to this information on a continuing basis, application of these benchmarks becomes difficult, if not impossible." This commenter recommended "that the burden of proof be shifted to the MMS such that a rebuttable presumption exists that the gross proceeds accrued to an affiliated producer is reasonable value absent a clear showing to the contrary by the MMS using these benchmarks."

MMS Response: Obviously, a lessee will be able to obtain the necessary data for application of the first benchmark because that paragraph refers to the lessee's own arm's-length contracts. If a lessee is unable to apply the first benchmark, MMS believes that in most fields or areas lessees will be able to obtain data on third-party transactions. If those data are unavailable, the lessee will have to use one of the succeeding benchmarks, but in no event can the lessee use a value which is less than its gross proceeds. Because values determined under the third and fourth benchmarks must be the subject of a notice to MMS (see § 206.152(e)(3) of the final rules), and because a lessee may seek a value determination from MMS (see § 206.152(g) of the final rules), MMS is satisfied that ultimately the lessee will be able to determine the proper royalty value for its gas.

One State commenter noted that it is inappropriate to put the valuation process into a benchmark straight jacket. In addition, this commenter stated that this paragraph permits a lessee to deliberately price its non-arm's-length disposition at the lowest price it can argue to be "comparable" in the field, even where much higher values may be obtained in other dispositions from the field.

MMS Response: A lessee will have many factors to consider in establishing a price under its non-arm's-length contracts, including tax consequences and regulatory concerns. If the price selected is equivalent to the price under comparable arm's-length contracts which must meet the standards in paragraph (c)(1), MMS is satisfied that the price reflects market value and is acceptable for royalty purposes.

One Indian commenter was concerned that the lessee would apparently make the determination as to whether the "arm's-length" contract under which the comparison is made is, in fact, arm's-length. Also, although the data are subject to monitoring, review, and audit by MMS, the commenter believes that in view of the past experience with audits by MMS, the lessees' reporting of gross proceeds under non-arm's-length contracts would remain on the honor system.

MMS Response: Under most valuation procedures MMS considered for these regulations, it would be up to the lessee in the first instance to apply those procedures and report royalties each month. MMS has adopted rules which it hopes are clear and comprehensible. It must be assumed that lessees will apply the rules properly considering the likelihood of audit and the possibility of significant interest and perhaps penalties for intentional underpayment of royalties.

One industry commenter interpreted the regulations to require that gas sold pursuant to spot-sales contracts would be valued under the first benchmark, even though "spot sales" are mentioned in the fourth benchmark. In addition, the best measure of value for gas sold pursuant to arm's-length spot sale contracts are those contracts and not other long-term contracts which are not comparable.

MMS Response: If a spot-sales contract is arm's-length, the value of the gas sold under it would be determined pursuant to paragraph (b), not by application of the benchmarks.

Two industry commenters stated that the net-back method should be stricken from this section because the net-back method is to be used as a benchmark only when the preceding three benchmarks are inapplicable; therefore, to these commenters it seems inappropriate to include it as a presumed priority when any other reasonable method is what is actually intended.

One industry commenter stated that the reference to net-back method needs clarification. Further, the commenter stated that net-back method is simply a means for reconstructing the value of gas to the well and has nothing to do with valuing the disposition of the production at a point remote from the well.

One State commenter noted that there is no logical basis for favoring valuation on the basis of "gross proceeds" less allowable deductions while disfavoring "netback method". Also, the net-back method is essentially the same thing as "gross proceeds" with allowable deductions.

MMS Response: The MMS believes that the benchmark priority system is appropriate. As explained above in regard to the definition of net-back method, MMS does not anticipate that this method will be used frequently. It generally will be used where the nature of the product has changed (i.e., gas to electricity) and it is necessary to work back from the sales price of the electricity to get a value for the gas.

Section 206.152(d)

Two industry commenters supported the premise that "if the maximum lawful price permitted by Federal law is less than the value determined pursuant to the valuation regulations, MMS would accept such maximum price as value."

One industry commenter recommended deleting the last sentence of this paragraph because gas sold under a warranty contract is valued in the same manner as gas sold pursuant to any other arm's-length contract.

MMS Response: The final rulemaking adopts this paragraph as proposed. The last sentence was not deleted because the MMS believes that warranty contracts must be viewed differently than other arm's-length contracts for purposes of value. Unlike arm's-length contracts for gas production which is committed to the contract, the seller under a warranty contract often had the sole authority to determine the origin of the gas production to be delivered. Therefore, the seller had the option not

to sell particular production from a Federal or Indian lease under the warranty contract and to sell it at a higher price. Thus, although in some NGPA categories the warranty contract price is the maximum price permitted by law for gas sold *under that contract,* it is only because of the sole decision of the lessee to have sold its gas under the warranty contract.

Section 206.152(e)

Four industry and one State commenter supported establishing a valuation procedure which does not require the prior approval of MMS because it will expedite and simplify the valuation process. Two industry commenters stated that "the time during which the MMS may direct a lessee to pay royalty at a different value should be limited to a specific period so that the lessee is not required to indefinitely retain the records it relies upon to support the value determination." The State commenter noted that "Also, the lessee should be required to retain 'all data relevant to determination of royalty value', not simply the evidence supporting the lessee's claimed value. A lessee should not be allowed to destroy relevant evidence supporting a different royalty valuation, and to retain only that which is self-serving. Also, the regulation should specify that MMS 'will' order compliance when incorrect payments are discovered."

MMS Response: The MMS has adopted in the final rule a valuation procedure that generally does not require MMS's prior approval. The second sentence has been modified to read as follows: "The lessee shall retain all available data relevant to the determination of value." Lessees are required to retain all records to support value determinations for a period of 6 years, unless an audit is ongoing, as mandated by section 103 of FOGRMA, 30 U.S.C. 1713. The lessee is responsible for complying fully with the regulations by properly valuing lease products, for royalty purposes, in accordance with the appropriate benchmark and to retain all relevant data. The MMS believes that the adopted language clearly states this requirement. The MMS also has adopted in paragraph (e)(2) of the final regulations a requirement that lessees make available to authorized MMS State and Indian representatives, or to the Department's Office of the Inspector General or the General Accounting Office, arm's-length sales and volume data which it has available for like-quality production sold from the same field or area or nearby fields or areas.

Five industry commenters recommended that MMS delete the requirement of proposed paragraph (e)(2) that a lessee must notify MMS if it uses the third or fourth benchmarks because it is not consistent with MMS's self-implementing concept and current MMS auditing and monitoring rights are adequate to allow the MMS to verify royalty compliance.

MMS Response: The MMS believes that what is now paragraph (e)(3) in the final rule is consistent with its self-implementing policy because lessees that determine value pursuant to paragraph (c)(3) or (c)(4) of this section must notify MMS of their determination after the fact and not before the fact. In every case, value for royalty purposes is subject to future audit.

Section 206.152(f)

One State commenter suggested that a "provision should be made for penalties for willful violations and violations made in reckless disregard of royalty obligations."

One Industry representative commented that if the lessee must pay any difference plus interest, MMS should also pay, when applicable, any difference plus any interest statutorily authorized.

MMS Response: If a lessee knowingly or willfully underpays royalty, it may be subject to civil penalties in accordance with FOGRMA, 30 U.S.C. 1719, and MMS regulations at 30 CFR Part 241. With regard to the second comment, MMS does not have the legal authority to pay interest on royalty overpayments.

Section 206.152(g)

This section provides that the lessee may request a value determination from MMS. One State commenter noted that "the lessee should be required to submit 'all data relevant to determination of royalty value'. Again, a lessee should not be able to limit its documentary submittal to evidence which 'supports' its claimed royalty value. Also, because of the impact upon the States and Indians, and in light of the existing cooperative and State audit programs, an opportunity should be given for review and comment on royalty determination requests by the potentially impacted State, Alaska Native Corporation, Indian Tribe or Indian allottee." One Indian commenter suggested that in addition to a lessee, a lessor should at any time be able to request a royalty value determination from MMS. This commenter also stated that "this paragraph should require MMS to notify the tribe or allottee involved of any change in value determinations."

Six industry commenters stated that "the MMS should impose a time limitation on itself to respond to requests for valuations from a lessee, in the absence of which the lessee should not be held liable for interest or penalties for underpayment of royalty."

MMS Response: The proposed language has been modified to require that a lessee submit all available data relevant to its valuation proposal. The MMS does not consider it practical to include in the regulations a requirement for review by the State or Indian lessor when a value determination is made. This does not make the cooperative audit program in accordance with FOGRMA less effective because MMS will make every effort to assist and consult with States and Indian lessors in valuation matters. The MMS also will make every effort to respond timely to requests by lessees, but this is necessarily dependent upon available resources, thus MMS cannot agree to a regulatory time limit.

Section 206.152(h)

This section provides generally that value for royalty purposes cannot be less than the lessee's gross proceeds less applicable allowances. One industry commenter recommended that the last sentence be replaced with "* * * allowance determined pursuant to these *regulations.*" Another industry commenter recommended that the phrase "less applicable transportation and processing allowances" be expanded to include "and other cost allowances." Two industrys commenters recommended deleting these paragraphs entirely.

MMS Response: For reasons discussed earlier in this Preamble, MMS has determined that the phrase "or which could accrue" should be deleted from the final rule. MMS also has modified this section to refer to all applicable allowances, not just transportation allowances.

Section 206.152(i)

This section addresses the lessee's obligation to place lease production in marketable condition. Two State, two Indian, and three individual commenters agree with the MMS's proposed provision that costs such as those for compression to meet pipeline pressure requirements to place the gas in marketable condition should be borne by the lessee.

One industry commenter was concerned that "marketable condition" is not a constant, although they acknowledge the lessee should act as a reasonably prudent operator in marketing its products. Five industry commenters believed that the statutory

framework and lease terms provide that royalty is due only on the market value of gas as it is produced at the wellhead and any obligation the lessee may have to render the gas marketable does not entitle the lessor to a free ride on those expenses incurred by the lessee subsequent to production. These commenters also believed the lessee is entitled to deduct all reasonable post-production expenses, including any costs incurred by the lessee to make the product marketable.

Three industry commenters recommended deleting this provision because of the changes occurring in the marketplace. They stated that these costs are subject to negotiation and may be incurred by either party. They believed that it is incorrect to assume that costs incurred by a purchaser have a direct effect on the price to be paid and suggested that the price paid by the purchaser should be used for royalty valuation unless stated specifically in the contract that it was adjusted to cover the subject costs.

One industry commenter noted that the Federal Energy Regulatory Commission has rejected imposition of any national quality standards for gas sold in first sales and has left to each producer-purchaser contract the resolution of which downstream-of-the-wellhead services are to be provided by which party to the contract. Reference was made to FERC Order No. 94–A, 22 FERC 61,055 (1983).

Eleven industry commenters essentially believed that the lessor should proportionately share in all costs subsequent to production, including the costs of placing production in marketable condition. They believed that all so-called "post-production" costs should be shared because such costs are incurred to enhance the value of the production from the lease for the benefit of both the lessee and the lessor; proportionate sharing of those costs would yield a value of production that is equal for both lessee and lessor. These commenters believed that royalty is due on the market value of production at the lease or well, and that proportionate sharing of any post-production costs incurred to enhance the value of production is necessary to meet this requirement.

They stated that, under the proposed rules, no allowance is made for the costs of processing residue gas to place it in marketable condition or for any other post-production costs incurred to dehydrate, compress, or gather the product. They further stated that MMS has abandoned the definition of "associated" and "principal" products but the unjustified concept underlying these terms has apparently been retained.

The industry commenters generally argued that MMS improperly sweeps all post-production operations under the holding of the *California v. Udall* case. They stated that MMS goes so far as to say that even if a buyer willingly buys raw, unconditioned gas (i.e., if there is an actual market for such gas in the field), any of the costs the buyer incurs to place the gas in "marketable" condition will be added on to the purchase price of the gas. They believed that this approach totally distorts the concept of market value at the lease, ignores the holding in *Udall*, and exceeds the reasonable and legal limits of the Secretary's discretion. They further stated that the Secretary should recognize the realities of today's onshore leasing and production and that all post-production costs should be deductible but, at the very least, they believed that off-lease post-production and unusual or extraordinary on-lease post-production costs should be shared proportionately.

The industry commenters stated that the MMS should recognize that manufacturing/processing, transportation, and other post-production costs are legitimate deductions necessary to arrive at the value of production, for royalty purposes, at the lease or well and that such costs should be deductible from the value of all marketable products when necessary to reflect the actual expenditures that enhanced the value of the gas after production. They further stated that if MMS continues to rely on the *Udall* holding, its proper application requires a consideration of the purpose served by a particular facility to distinguish between costs "incidental to marketing" and manufacturing or transportation costs.

MMS Response: Historically, the policy and practice of MMS is that the lessee generally is responsible for placing the lease product in marketable condition at no cost to the lessor. This practice has been upheld by court decision. The MMS has adopted the suggestion that the language "unless otherwise provided in the lease agreement" be added at the end of the first sentence because there are a few leases in which the lessor shares in such costs. Also, as noted earlier, MMS received many comments that so-called post-production costs should be allowed as a deduction in determining value for royalty purposes. Generally, these costs are not allowed as a deduction because they are necessary to make production marketable. However, MMS has considered carefully all of the comments on this issue and decided that there may be certain circumstances where some extraordinary costs for gathering, compression, dehydration, or sweetening should be allowed as a deduction. Such allowances will be authorized only on the basis of individual cases upon application to the MMS. A new § 206.152(i)(2) has been added which establishes a two-part test to qualify for a cost allowance. First, only production from unusually high-cost leases qualifies. The only leases that qualify are those located north of the Arctic Circle, those offshore leases located in water depths in excess of 400 meters, or those which MMS determines to be a unique gas production operation for purposes of this section. Any leases that do not meet this first threshold cannot apply for this allowance. However, even for leases that meet this threshold, MMS will not grant an allowance unless the lessee demonstrates to MMS's satisfaction that the costs are, by reference to standard industry conditions and practice, deemed to be extraordinary, unusual, or unconventional. In some instances, MMS may grant an allowance only to the extent that the extraordinary costs exceed conventional costs for the same operation.

Section 206.152(j)

One industry commenter stated that this provision, as proposed, goes against the firm notion of gross proceeds and grants an exception only in situations where the lessee is entitled to a contractual price increase. According to the commenter, this ignores the reality of the existing situation in the gas marketplace where many purchasers have unilaterally suspended contractually obligated takes and payments under the pretext of "force majeure." The commenter believed that it may be more prudent in many instances to diligently renegotiate contracts which would be in the best interest of the lessee and lessor. The commenter further stated that such renegotiations may take place over an extended period of time during which the lessee may be receiving less than its contract price for its gas; therefore, under these circumstances, where the lessee is taking undocumented, reasonable measures to force purchaser compliance and to favorably renegotiate its contract, the lessee should only be required to pay royalty on the gross proceeds it receives from the purchaser for its gas.

The industry commenter also stated that rapid deterioration of purchasers' markets has caused unilateral price

actions; further, difficult and protracted negotiations have ensued during which proceeds are less than the contractually agreed to price. The commenter mentioned that lengthy litigation is a last resort. The lessor benefits from continued production at market prices pending final resolution and, therefore, a more realistic approach would be to accept proceeds if proceeds were not less than the prevailing market price in the field or area.

One Indian commenter foresaw the ability of willing parties to amend contracts to compromise payments that have accrued to or would accrue to the lessee under its existing contract. The commenter believed that, of course, such contract revisions cannot be avoided in all instances but, if they are made, the lessee should not be able to compromise the lessor's right to receive royalty payments pursuant to the original contract and not under any amendments that have compromised the price.

One State commenter expressed that by freely allowing contract revisions (even retroactive ones), MMS would provide a gaping loophole in the requirement that a lessee seek to enforce its contract "entitlements." The commenter believed that when a lessee is challenged by the MMS about not enforcing its contract rights, there are few buyers who will not agree to assist their sellers by retroactively amending their contracts to the lower amount actually paid.

MMS Response: MMS has adopted this provision with only minor changes from the proposal. However, the paragraph does not preclude the approach suggested by the commenters. This section requires a lessee to pay royalty in accordance with the contract price, but also expressly recognizes that contract prices may be amended retroactively. MMS is aware that often there is a process of negotiation that occurs before the contract is formally amended and that lower payments may be received in the interim. Royalties may be paid on the gross proceeds received by the lessee until all attempts to force the purchaser to renegotiate the contract or to comply with the existing contract are exhausted, provided the lessee takes proper or timely action to receive prices or benefits to which it is entitled, or to revise the contract retroactively. Thus, the MMS will accept a renegotiated or a revised contract price if the main reason for renegotiating or revising the contract is not solely to reduce royalties. However, if a higher price can be legally enforceable under a contract and the lessee is not diligent in obtaining that price, royalties will be due on that higher price.

Two industry commenters suggested that the phrase "the lessee will owe no additional royalty until monies are * * * received" be reworded to insert the phrase "unless or" before the word "until". They believed that it is contrary to the concept of "proceeds received" to attempt to assess royalty on proceeds which have never been received when only part payment is made to the lessee in contract disputes.

MMS Response: MMS adopted the suggested change in the final regulation.

One commenter stated that retroactive application of contract revisions may be inconsistent with FOGRMA because it requires that royalties be keyed to production and not to sales. The commenter further stated that timely application by a lessee for a price increase should not be sufficient to allow a lessee to defer payment of royalties until monies or consideration resulting from the price increase are received. The commenter stated that a lessee should be required to go further in pressing its claim for benefits accruing or which could accrue to the lessee under the contract before nonpayment of additional royalties is allowed, perhaps even to the point of instituting litigation.

Two industry commenters stated that the "prudent operator" clause is unnecessary because it is in the lessee's own best interest to obtain the maximum amount of revenue possible under the terms of the applicable contract. They believed that the inclusion of a "prudent operator" standard in the regulations contradicts the concept of using market proceeds and merely serves to impose an obligation on MMS auditors to evaluate and second-guess the prudency of the actions of lessees. They also believed the "prudent operator" clause opens the door to regulatory uncertainty and the basing of royalties on amounts in excess of the market value of gas. They believe the provision should be eliminated.

MMS Response: Although most lessees will try to maximize the amount of revenue possible under the terms of the applicable contract, not all will be diligent. Therefore, MMS must protect the Federal Government's and Indian's interests by using the "prudent operator" clause.

Two industry commenters stated that they disagreed with MMS's attempt to enforce contract entitlements. They believed that, as proposed, royalties would be based on the highest price obtainable and would serve to encourage the pursuit of price increases, rather than the proper payment of royalties based on the prices received. They also believed that this provision is contrary to MMS's own statement that "value is best determined by the interaction of competing market forces, the 7/8ths or 4/5ths owner is going to negotiate the best deal he/she can to further his/her own interest, advancing those of the royalty owners as well;" therefore, they recommended this provision be deleted.

MMS Response: The MMS does not view this provision as contrary to the approach it has taken to determine values. It would be inconsistent with the theme of these regulations for MMS to not require full compliance with its principal value determinant.

Section 206.152(k)

MMS has added a new paragraph (k) to the final rules which provides that in those situations where MMS may make a preliminary value determination in the course of monitoring compliance with these regulations, that determination will not be binding until MMS has done an audit and the audit formally is closed.

Section 206.152(l)

Two individual commenters stated that this paragraph, which was proposed as paragraph (k), appears to preclude the lessor or overriding royalty interest owner from obtaining any information to substantiate the transportation and processing costs he is being charged. Therefore, they are opposed to this provision.

One Indian commenter stated that this provision perpetuates restrictions upon disclosure of data required in reviewing a lessee's computation of royalty. The commenter believed that Indian Tribes should be provided copies of all reports submitted by their lessees to MMS, upon request. The commenter also stated that the Tribes need this information to monitor lessees as well as responsible Federal agencies, and requested that the information provisions be revised to ease release of this information to Tribes subject to reasonable restrictions upon disclosure to third parties.

One Indian commenter stated that this provision should make it clear that all information will be available to Indian lessors and States without going through the Freedom of Information Act procedures. The commenter also stated that to place such a burden on Indian Tribes and States who are the beneficiaries of the production would not be reasonable.

One Indian commenter stated that the scope of this provision is so broad that it

effectively denies Indian Tribes and allottees and States access to the information required to assure that valuations are properly determined. The commenter reminded MMS that the intent of the FOGRMA is to provide all interested parties, including Indian Tribes and allottees and States, the data necessary to conduct audits, oversee the audits performed by MMS, and in the case of Indian Tribes, to manage their mineral resources and to plan for governmental operations. The commenter stated that it could not understand why the MMS included this provision inasmuch as the almost unanimous vote of the Royalty Management Advisory Committee on a resolution recommending that the regulations provide Indian Tribes access to data demonstrates that industry also understands that Indian Tribes require and should have access to such data.

MMS Response: The intent of this paragraph is not to preclude access to information for those who are working in concert with the MMS to the extent allowed by law, but rather to ensure the lessee that disclosure of proprietary information is in accordance with established procedures. There are restrictions on providing certain types of information to persons outside the Department of the Interior, and MMS must act in accordance with those limitations. States and Indians with FOGRMA delegations and cooperative agreements will have broader access to information which otherwise could not be released. This section is not intended to limit in any manner an Indian lessor's right to obtain information directly from the lessor or from MMS to the extent provided in lease terms or applicable law.

Section 206.153 Valuation standards—processed gas.

This section is almost identical to § 206.152 and the comments received were also similar. Therefore, MMS will not repeat the section-by-section analysis or response to comments for this section. Interested persons should refer to the corresponding part of § 206.152.

Section 206.154 Determination of quantities and qualities for computing royalties.

Section 206.154(a) establishes procedures for determining the volumes and quality of unprocessed gas that must be used in computing royalties. Three industry commenters were opposed to MMS or BLM assigning a point of royalty settlement that is different from the lessee's sales point where the transfer of title occurs, as stipulated in the lessee's arm's-length gas sales contract.

One industry commenter stated that MMS must recognize that the proper point of royalty valuation is the lease and that MMS cannot confiscate the entrepreneurial profits which are added by downstream activities of the lessee and are not part of the value of the production in which the lessor is entitled to share.

Two industry commenters stated that this provision is inconsistent with the statutes, lease terms, and the proposed gross proceeds valuation methodology.

MMS Response: Historically, MMS has required that royalties be computed on the basis of the quantity and quality of unprocessed gas in marketable condition as measured on the lease unless prior approval to measure off-lease is obtained from BLM or MMS, for onshore and offshore leases, respectively. This will assure the lessor that the total production from the lease is accounted for. This provision is consistent with the statutes, lease terms, and the gross proceeds valuation methodology because this provision establishes a point of royalty measurement upon which a quantity, at a quality, is valued for royalty purposes.

One industry commenter stated that paragraph (a)(2) would adjust the price received under an arm's-length contract in the event that there were some line loss between the point of royalty settlement and the point of sale. The commenter stated that the arm's-length contract whose quantity provisions MMS would modify requires the purchaser to pay only for production which is actually received but, by adjusting the quantity figures, MMS is, in effect, amending, solely for royalty purposes, the deal between the lessee and the purchaser.

MMS Response: The MMS must structure its royalty accounting program to be in concert with the administration of oil and gas leases by the other components of the Department of Interior s full mineral leasing program. As such, this provision simply recognizes that it is the measured production, as required by BLM or MMS operations personnel, that must be valued for royalty purposes.

Section 206.154(b) establishes the procedures for determining the quantity of residue gas and gas plant products on which royalty must be paid. One industry commenter suggested that this provision be reworded to indicate that "net output" means the production from the plant and not tailgate deliveries. The commenter stated that net monthly output could be interpreted to mean plant tailgate deliveries. The commenter said that if this were the case, royalty would not be paid on plant products until they were sold.

Another commenter stated that in current marketing situations, it is impossible to avoid temporary storage of gas plant products. The commenter said that purchasers are nominating volumes they will purchase which may or may not coincide with production. The commenter also stated that royalties should not be paid on production stored until it is sold because in that manner, value can be properly determined. The commenter said that residue gas must be delivered as produced because there will normally be no means by which the lessee can store it.

MMS Response: As adopted at § 206.151(a), net output means the quantity of residue gas and/each gas plant product that a processing plant produces. Therefore, royalty is due on residue gas and gas plant products at the time they are produced.

One industry commenter stated that this *methodology* of net output is contrary to the MMS concept of gross proceeds accruing from the *sale* under an arm's-length contract. The commenter said that many gas plants place the net output in temporary storage awaiting sales and that the net output of gas plant products is not valued until removal from temporary storage and sale. The commenter stated that if this section is implemented, it is probable that there would be many MMS audit exceptions as a result of the valuation of net output rather than actual sales from temporary storage facilities.

One industry commenter stated that it may be difficult to establish the value of the product that remains in storage. The commenter also stated that if the lessee is forced to compute a value, then the concept of "gross proceeds" becomes meaningless because the lessee, in effect, becomes the purchaser of the product. The commenter claims that when the product is disposed of at a later date, MMS would have no basis on which to review the proceeds eventually realized by the lessee for sale of the production.

MMS Response: The MMS feels that there is no conflict between the gross proceeds methodology and these provisions. It must be recognized that it is the volume of gas leaving the lease which must be valued, for royalty purposes, and the use of the cumulative value of the residue gas and gas plant products less applicable allowances is the method by which this is done when

gas is processed. As such, all residue gas and gas plant products attributable to this production must be used in determining value. Adjusting the gross proceeds to reflect the net output attributable to the lease would be accomplished by applying the unit value established by the actual product sales to the portion of the net output attributable to the lease, which was not sold in the month produced. Likewise, if the quantity of any product sold during a month is greater than the net output attributable to a lease because of sales of a quantity of product which was previously placed in storage, the gross proceeds would be reduced. If proper documentation is maintained by the lessee and made available to MMS during an audit, no audit exceptions should result.

Section 206.154(c) establishes the procedure to allocate the net output of a processing plant back to the leases. One industry commenter proposed that the language be modified to reflect the view that any lease allocation method agreed to between a seller and purchaser and/or processor will be deemed acceptable, including methods where the parties are affiliates, subject to review by MMS.

One industry commenter suggested that any contractually prescribed method should be deemed acceptable in preference to "a generally accepted lease allocation method", which may be a contention in the future.

MMS Response: The MMS has adopted a specific procedure for allocating the net output of a processing plant back to leases. The method adopted is the method prescribed by the current regulations. MMS believes that this procedure is the predominant method used by industry. However, MMS has adopted a provision in the final rule whereby a lessee may request approval of other allocation methods.

One industry commenter suggested the addition of the sentence "This same methodology shall also apply to allocations among unitized and communitized areas." The commenter believed that this inclusion of units and communitized areas was intended.

One Federal agency commenter suggested the modification of the proposed rule to include a tight definition of the term "generally accepted." The commenter said this term should be defined as an allocation method used consistently by a majority of gas plant operators and this method must be in accordance with the method promulgated by an industry group such as COPAS.

MMS Response: The final rule adopted limits the use of methods other than the one prescribed, as outlined above. Therefore, the term "generally accepted" has been eliminated from the final rule. Unitized and communitized areas will be covered under this provision and MMS does not deem it necessary to add a specific reference.

Paragraph (d) prohibits deductions from royalty volume or royalty value for actual or theoretical losses. One Indian and one State commenter agreed with this provision, stating that no deductions should be allowed for actual or theoretical losses prior to the point of royalty settlement.

Sixteen industry commenters stated that line losses are attributable to several factors. They stated that line losses are partially attributable to metering differences and partially attributable to physical factors, and they are a part of the reality of oil and gas field operations. They believed that the provision should be amended for both valuation and allowance purposes to provide a credit for line loss not attributable to negligence, because such a change in the regulations would be in conformance with FOGRMA. They stated that allowing losses would also make the allowance regulations conform to the overall market orientation underlying the valuation proposal, because costs associated with line loss are commonly explicit components of arm's-length contracts and tariffs.

MMS Response: When a volume of gas, upon which royalty is due, has been determined in accordance with the requirements of MMS's offshore operations and BLM's onshore operations personnel, MMS must collect royalty upon its value. Likewise, it is imperative that the quantities of residue gas and gas plant products attributable to a lease be determined once, and only once, and royalty paid on those volumes. This is consistent with the historical practice of the Department. The treatment of line losses as a cost of transportation is addressed later in this preamble.

Section 206.155 Accounting for Comparison.

In the proposed rule, MMS required so-called dual accounting only in situations where the lessee (or a person to whom the lessee transferred gas pursuant to a non-arm's-length contract) processes the lessee s gas and, after processing, the residue gas is not sold pursuant to an arm's-length contract.

Two industry commenters stated that the removal of the requirement to perform dual accounting for OCS gas sales where the residue is sold pursuant to an arm's-length contract is a substantial improvement in the regulations which will reduce paperwork for both MMS and lessees.

Another industry commenter endorsed the MMS s decision to abolish "accounting for comparison" (more commonly known as dual accounting) for processed gas except where the lessee has no arm's-length contract for the sale of residue gas or where dictated by lease terms. The commenter had no objection to such value comparison if the gas is processed in a lessee-owned plant, and the residue gas is not sold under an arm's-length contract.

Five industry commenters stated that they believed the continuation of dual accounting for most processed gas in non-arm's-length residue sales is unnecessary. They said that because the residue gas will be valued pursuant to MMS s guidelines in both arm's-length and non-arm's-length situations, the elimination of dual accounting for one and not the other will create substantial administrative effort when both arm's-length and non-arm's-length residue sales occur at the same plant. They also stated that as long as a substantial portion of sales from a plant continue to be arm's-length, which they propose to be set at 25 percent or higher, elimination of the dual accounting requirement for the remainder of that plant will not result in any lesser degree of accuracy in determining market value.

One industry commenter stated that this provision stops short of being totally consistent with other MMS proposals on gas valuation. The commenter said that inasmuch as MMS has determined that there is an acceptable method to value residue gas sales under non-arm's-length or no-contract situations, there is justification for eliminating dual accounting for residue gas valued in accordance with this provision, regardless of the types of sales contracts.

Another industry commenter believes that royalty is due only on the market value of gas, associated products and oil because they are produced at the wellhead. The commenter stated that the concept of dual accounting under which MMS assesses royalty on either the value of the principal and associated products after processing or the value of the unprocessed gas, whichever is higher, is fundamentally unfair.

Two industry commenters recommended that this paragraph be deleted because dual accounting results in higher value to the lessor than the lessee. They believed that the value should be based upon the value of the unprocessed gas at the lease if the gas is not processed, or upon net realization

(gross proceeds minus allowances) if gas is processed, and not the higher of the two. They stated that because the proposed method is applied after the fact, only the lessee bears any losses. Another commenter stated that it would be unfair and inequitable to require the payment of royalty on a basis higher than the value of the processed gas when the value differential is not because of the negligence or imprudent actions on the part of the lessee but instead represents the current market fluctuations for the gas plant products and residue gas. The commenter also suggested the addition of the word "applicable" before the word allowances in paragraph (a)(1).

MMS Response: To ensure that the Federal and Indian lessors receive the proper royalties, MMS continues to believe that dual accounting must be used where the lessee, or a person to whom the lessee has transferred gas pursuant to a non-arm's-length contract or no-contract situation, processes the lessee's gas and, after processing the gas, the residue gas is not sold pursuant to an arm's-length contract. This provision will encourage the producer under a non-arm's-length contract to obtain the highest price for the gas produced whether that higher price comes from processing the gas or whether it comes from selling the unprocessed gas.

One industry commenter stated that dual accounting imposes an unreasonable accounting burden on both the lessee and the Department and allows the Department to effectively second-guess the lessee each month on the decision to process the gas.

MMS Response: The MMS's current policy is to require dual accounting for all offshore processed gas processed by the lessee, including affiliates, and for onshore gas processed by the lessee in a lessee-owned plant or onshore gas sold to an affiliate of the lessee and that affiliate processes the gas. Because the requirement for dual accounting adopted in the final rule eliminates some of the current requirements, the accounting and administrative burden should be reduced for both industry and MMS.

Proposed § 206.155(b) specifically provided for dual accounting where required by the terms of a Federal or Indian lease. Six industry commenters agreed with this provision provided that the lease terms, whether Indian or Federal, specifically require dual accounting.

Three Indian commenters stated that dual accounting should be required for all Indian leases whether specifically stated in the lease terms or not. They stated that this is needed for the Secretary to fulfill his trust responsibilities to the Indians.

MMS Response: MMS has adopted this provision essentially as proposed.

Section 206.156 Transportation Allowances—General.

The MMS received a total of 87 different comments from 44 separate commenters on this section of the regulations. Of the 87 comments received, a total of 9 were from various State agencies—4 from State Governors, 3 from State auditors, 1 from a State agency, and 1 from a State trade group. Forty comments were received from Indian interests—35 from Tribal representatives, 2 from Indian trade groups, 1 from an Indian Tribe legal representative, and 2 from joint State and Tribal associations. Thirty-one comments were received from industry—21 from oil and gas companies, 7 from industry trade groups, and 3 from businesses. In addition, 5 comments were received from individuals, and 2 comments were received from local government entities—1 from a mayor and 1 from a superintendent of schools.

Comments on transportation allowances which did not relate to any specific section of the regulations were considered to be addressed to the General section of the transportation regulations, § 206.156. These comments addressed four broad issues—validity issues, adequacy/inadequacy issues, post production costs and other cost issues, and issues relating to the definition of terms.

1. One issue concerned the validity of any transportation allowances whatsoever and proposed that MMS should not consider transportation allowances as valid deductions from royalty computations, or only consider such allowances if transportation is necessary for lease development or results in a higher royalty.

Four parties—two Indian, one State, and one State and Tribal trade organization—stated that transportation allowances should only be granted when necessary (1) to market the product, (2) to promote development of the lease, (3) to obtain a higher royalty value, (4) to enhance offshore development, or (5) if the royalty revenue increases enough to offset the allowance. The key word in these comments was "necessary." None of the parties believed that any transportation allowance should be given if it was not necessary. A State representative suggested approving the transportation allowances on the basis of individual cases only if necessary.

One Indian commenter stated that only the reasonable, actual, and necessary transportation costs from a lease boundary to a point of sale should be allowed and the costs should not include any profit or allocated overhead from the regional or home office.

One Indian commenter stated that the regulations should establish transportation allowances as an exception, not as a rule.

Six Indian commenters stated that MMS should not grant any transportation allowances as a deduction against Indian royalties. The six commenters opposed the transportation allowance for Indian leases for such reasons as (1) Indian leases do not provide for transportation as a deduction from royalty, and (2) transportation allowances have never been granted for Indian leases.

Five Indian commenters emphasized that MMS must take into account its trust responsibility to the Tribes and allottees in preparing valuation regulations. These commenters advised that MMS must protect the Indians' interests.

The MMS received comments from five Tribes and one State representative asserting that the royalty interest should be cost-free. These comments all stressed that royalties have always been and should always remain free of costs. All commenters believed that the costs of making lease production marketable, including transportation, are the responsibility of the lessee. The State representative suggested that MMS "* * * keep the door closed on all presale costs. Once it's opened, it's hard to let only the chosen ones in."

MMS Response: Based on Interior Board of Land Appeals decisions, Solicitor opinions, and judicial decisions, it has been DOI policy since 1961 to grant transportation allowances when production is moved to a sales point off the lease. Furthermore, the IBLA has specifically ruled that transportation allowances must be granted for Indian leases. *Kerr-McGee Corp.*, 22 IBLA 124 (1975). Therefore, the transportation allowance regulations being adopted are consistent with past practice and consistent with the Secretary's responsibility to the Indians. The MMS believes generally that royalty should be free of cost. However, values may have to be adjusted for transportation and/or processing to determine value at the lease. The MMS believes that the policy of granting transportation allowances to properly value lease production is appropriate and should continue.

2. Another issue concerned the adequacy or inadequacy of the proposed gas transportation regulations in general. Some commenters believed that the regulations were generally deficient, while others pointed to specific instances where changes should be made to improve their specific applicability. Following is a brief summary of these types of comments.

Two industry and two State respondents commented on the flexibility of the regulations. One industry commenter stated that the regulations should be modified to embrace both traditional and nontraditional transportation arrangements. Another industry commenter suggested that the regulations should accommodate changes in transportation and marketing. One State representative expressed concern that the regulations do not address new marketing opportunities related to the unbundling of pipeline services and market area gas storage which allow for greater sales levels in higher priced periods.

The MMS received comments from three Tribes regarding the relationship between the lease terms and the regulations. One commenter requested that the regulations not be allowed to change the lease terms. Another commenter stated that the regulations be consistent with the lease terms. A third commenter stated that where the lease is silent, the regulations should not allow the gross proceeds received under an arm's-length contract to be reduced for transportation costs.

The MMS received comments from three commenters regarding the effect of transportation allowances on revenues. A State organization stated that MMS should develop simple and concise rules that do not adversely affect Western States' revenues, and which will allow for more effective auditing. One Tribe requested that the royalty rate not be decreased in effect by redefining the rate basis. One local community commenter stated that the proposed regulations should not be issued without assessing the impact on the school or other local subdivision budgets. Five local community commenters opposed the proposals on the grounds that deductions would be taken too liberally, or perhaps royalty payments would be eliminated completely.

One Tribe stated that the regulations should apply only to new leases. One industry party and one Tribe recommended that a separate set of regulations be developed for Indian lands only.

MMS Response: The MMS believes that the regulations are complete and are sufficiently flexible to apply to the different types of gas transportation arrangements that might arise in the future. MMS is aware of nothing in the transportation allowance regulations that would change the terms of any Indian mineral lease. The MMS agrees that the procedure for determining a transportation allowance places a great deal of reliance on the gas industry. However, this program will be under continuous review and oversight by MMS. Thus, the ability to effectively review, evaluate, and audit transportation allowances has been maintained under the new regulations. The MMS believes that the consideration of transportation costs is necessary to determine the value of lease production at the lease.

3. One broad issue discussed by commenters was the deduction of post-production costs and other costs from royalty payments.

The MMS received many comments concerning the issue of post-production costs as an allowable deduction from royalty. Thirteen commenters (five industry groups, three industry trade organizations, and five local community parties) commented in favor of allowing all post-production costs to be deducted from the royalty portion.

MMS Response: This section of the regulations addresses only transportation allowances. The issue of post-production cost allowances is properly addressed in other sections of the regulations.

4. One issue commented on by several commenters concerns the definition of terms used in the regulations.

Three industry respondents and one industry trade organization commented that the term "reasonable" should be deleted from this section. One industry concern was that this term will only result in a wide diversity of opinion as to what a reasonable cost is.

One industry representative suggested that the term "actual" should be deleted for clarification purposes.

The MMS received eight comments (four Tribes, one State representative, and three industry parties) suggesting that the term "remote from the lease" should be defined or changed. An industry representative stated that many terms, such as "remote" and "field gathering" beg for definition. This commenter requested that a distinction between "gathering" and "transportation" be delineated, for royalty purposes, and also suggested that the term "remote" should mean anything outside the lease boundary. Two industry commenters identically recommended changing this phrase to "first available market."

MMS Response: The term "reasonable" is defined by the Merriam-Webster New Collegiate Dictionary as "moderate, fair." The MMS intends that this same definition apply in the determination of a transportation allowance.

The MMS agrees that the term "gathering" should be defined. The definition of "gathering" has been included in § 206.151 and was discussed above. The phrase "remote from the lease" has been deleted from the final rule which uses the phrase "off the lease."

Section 206.156(b)

The MMS received a total of 12 comments on this section, proposed as section (c), which requires that transportation costs be allocated among all products transported. The section also provides that no allowance may be taken for transporting products which are not royalty bearing.

Five industry commenters and one trade group recommended deletion of this subsection. One industry representative stated that transportation costs represent the rate for moving the aggregate product stream. Three industry commenters stated that allocation is an administrative burden and is unfair and inequitable. Two industry commenters and one trade group commenter stated that it is inequitable to require allocation of transportation costs for the incidental movement of nonroyalty-bearing products.

One industry representative recommended that transportation costs be taken as an aggregate charge against the value of the full product stream.

One industry representative stated that this section adapts an unrealistic transportation deduction exception by not allowing a transportation deduction for nonroyalty-bearing products. According to this commenter, practical realities dictate that nonroyalty-bearing products entrained with gas be transported.

MMS Response: The MMS does not agree in principle with the commenters proposal that the cost of transporting nonroyalty-bearing substances should be shared by the lessor. Therefore, this regulation has been retained as proposed. The MMS is aware that the allocation of transportation costs in situations where more than one product is involved could be burdensome. However, it is MMS's experience that the allocation requirement would only be burdensome in a few instances where the products being transported are not all in the same physical state.

Section 206.156(c)

Section 206.156(c) was proposed as § 206.156(b). The MMS received a total of 71 different comments from 30 commenters on this provision which limited the transportation allowance to 50 percent of the value of the product transported. The comments on this section related to one major topic: whether the limitation should be eliminated or retained.

Eleven industry commenters and five trade group representatives stated that MMS should abolish the 50-percent limitation for one or more of the following reasons: (1) If the proposed limit is retained, the exception to the 50-percent limitation may not be exercised freely enough; (2) the 50-percent limit could impose a serious economic deterrent to the development of frontier areas; (3) the limitation figure is strictly arbitrary and totally unjust to the lessee/working interest owners; (4) it would be a rare case when a gas transportation cost would come close to the proposed 50-percent cap, much less exceed it; (5) the proposed 50-percent cap is a deviation from the stated intent of MMS to base royalty valuation on "gross proceeds."

Ten commenters stated that MMS should approve requests for transportation allowances exceeding the 50-percent limitation upon submission of adequate documentation by the lessee.

Eight industry commenters and three trade groups stated that MMS should allow lessees to carry forward transportation costs otherwise allowable (except for the 50-percent limitation) from the current year to subsequent years. According to the commenters, this procedure should be applied to all transportation systems, but it would be especially important in the frontier areas. One commenter from industry stated that MMS should not permit roll forwards because it would create paperwork and allow the lessees to use the 50 percent limit permanently.

Six industry commenters and two trade groups stated that the 50-percent limit could be a disincentive for exploration and for building transportation systems when costs exceeding the cap may not be recovered.

One State representative stated that the 50-percent limitation provides incentive to keep costs under control while allowing some relief for legitimate hardship conditions.

MMS Response: The MMS has decided generally to retain the 50-percent limit on transportation in the final rule. For unprocessed gas valued pursuant to § 206.152, the transportation allowance deduction based on a selling arrangement is limited to 50 percent of the value of the unprocessed gas determined in accordance with § 206.152. For processed gas, the transportation allowance for gas plant products or residue gas based on a selling arrangement is limited to 50 percent of the value of the residue gas or gas plant product (except sulfur) determined in accordance with § 206.153. Natural gas liquids are considered one product. An exception has been included in the final rule for sulfur recovered through processing gas. Based upon past experience, MMS has decided that limits of 100 percent are warranted for sulfur.

A lessee may request, and MMS may approve, a transportation allowance in excess of 50 percent if the lessee demonstrates that the costs incurred were reasonable, actual, and necessary. Thus, the 50-percent threshold merely gives MMS the ability to monitor more closely the situation where the allowance based on reasonable actual costs will exceed that limit. In no event may the allowance for any lease product exceed 100 percent of the value of that product.

Section 206.156(d)

The MMS received two comments from two industry representatives on this section. The two representatives of oil and gas companies recommended that MMS should be required to pay interest on overpayments by lessees to the extent permitted by law.

MMS Response: The MMS has no legal authority to pay interest to lessees on their overpayments.

Section 206.157 Determination of transportation allowances.

Section 206.157(a) of the regulations addresses transportation allowances where the lessee has an arm's-length contract for transportation services. The MMS received a total of 65 different comments from 42 commenters on this section of the regulations. Although there were comments on a wide variety of subjects, 11 principal issues were addressed: Acceptance of arm's-length transportation agreements; excessive penalty and retroactive approvals; MMS's approval of the transportation allowances; acceptance of transportation reduced prices; status of currently approved allowances; required filing every 12 months; allowance on nonroyalty-bearing production; allocation of transportation costs; suggested deletion to regulations; period for filing a proposed allocation; MMS payment of interest on lease overpayments; and clarification of the conversion process.

1. Acceptance of arm's-length transportation agreements as an accurate indicator of reasonable, actual costs.

Three industry commenters supported the proposal to accept arm's-length contract costs as a reasonable transportation allowance. These commenters explained that arm's-length contracts provide an accurate indicator of "reasonable actual costs" because they reflect the true costs to the lessee for transporting production to a sales point downstream of the lease.

Two Tribes expressed serious concern about the validity of using arm's-length contracts as an indicator of value. One Tribe stated that arm's-length contracts are not a bona fide indicator of reasonable, actual costs. One Tribe expressed doubt that there can ever be an arm's-length contract between companies in the gas industry. Another Tribe stated that arm's-length contracts should not be accepted unless a thorough analysis of lessee/purchaser affiliations is undertaken. One Tribe also expressed considerable doubt that the criteria used by MMS would assure that an arm's-length contract is present in any given case. An Indian trade organization stated that MMS should establish appropriate criteria to determine the accuracy and reasonableness of allowances granted under arm's-length contracts (and non-arm's-length contract situations).

MMS Response: The MMS currently uses the payments made by a lessee under an arm's-length transportation agreement as an accurate indicator of reasonable, actual costs. The MMS has determined that payments made under arm's-length contracts are the best available indicator of reasonable, actual costs incurred by the lessee.

2. Disallowance of a transportation allowance for a reporting period not covered by a Form MMS-4295.

The MMS received responses from 12 industry commenters and 3 industry trade groups stating that the disallowance of a transportation allowance for a reporting period not covered by a Form MMS-4295 is an excessive penalty for what was considered by the commenters to be such a minor infraction of the rules. The point was also made that the lessee does not always have the data to timely file a Form MMS-4295 before the Form MMS-2014 is filed.

Many commenters stated that the regulations should have a provision allowing transportation allowances on a retroactive basis because a lessee does not always have the details on transportation worked out before

production begins. Thus, it sometimes is necessary to go back and revise data related to an allowance after agreements are reached because of the fast changing current oil and gas markets.

It was suggested that MMS should consider a monetary fine for failure to file, or disallow the deduction for any period until Form MMS-4295 is filed. The lessee would not lose a deduction, but would be precluded from taking the deduction until the proper forms are submitted to MMS for the periods covered.

MMS Response: After careful consideration of the comments, MMS has determined that the reporting penalties included in the proposed regulations were excessive. The MMS has also considered the comments on retroactive approvals and has revised the final regulations to allow lessees to request transportation allowances retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS-4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. Also, § 206.157(d) of the final rules provides that if a lessee deducts a transportation allowance on a Form MMS-2014 without complying with the requirements of this section, the lessee will owe interest on the amount of the deductions until the date proper forms are filed. However, the lessee will be required to repay the amount of any deduction disallowed due to the limitation on retroactivity.

3. The MMS's preapproval of transportation allowances.

The proposed rule provided that prior MMS approval was not required before a lessee could deduct a transportation allowance based on an arm's-length contract. Representatives of four trade organizations, five oil and gas companies, and one business expressed approval of the self-implementing concept for transportation allowance regulations. This was seen as a method of relieving a considerable administrative burden on both industry and MMS. One Tribe disagreed with the self-implementing nature of the regulations because it was seen as a method of establishing the 50-percent limitation as a floor for transportation allowances.

One Tribe stated that MMS should preapprove all transportation allowances and should do so only on a showing of necessity to promote development or a showing that a higher value could be obtained for the gas at a point of sale away from the lease. It was also pointed out by this commenter that neither the MMS nor Indian Tribes have the resources to audit all leases and, if these allowances are not monitored "up front," they will never be audited.

MMS Response: The MMS considers arm's-length contracts a valid indicator of reasonable, actual costs. Thus, it is not necessary to preapprove transportation allowances based on such contracts. The MMS will monitor the transportation allowances, and they are subject to later audit.

4. Acceptance of transportation-reduced prices without requiring the filing of Form MMS-4295 for both arm's-length and non-arm's-length situations.

Representatives of three oil and gas companies and two trade organizations commented that MMS should accept transportation-reduced prices without requiring the filing of Form MMS-4295 for both arm's-length and non-arm's-length situations. It was believed that this policy would reduce the administrative burden on industry and MMS. However, one commenter disagreed with this proposal because it was considered a potential technique to exceed the 50-percent limitation provisions of the regulation.

MMS Response: The MMS has determined that the regulations should be revised to provide that transportation factors which reduce arm's-length sales contract or posted prices are to be considered as reductions in value rather than transportation allowances. This provision is included in § 206.157(a)(5).

5. Should current approved transportation allowances remain in effect until they expire?

One industry respondent stated that the transportation allowance reported on Form MMS-4295 should continue until the applicable contract or rate terminates, or is modified or amended.

MMS Response: The MMS has revised the regulations in § 206.157 (c)(1)(v) and (c)(2)(v) to provide that any transportation allowances in effect on the date these regulations become effective be allowed to continue until such allowances terminate subject to later audit.

6. Should MMS require the filing of Form MMS-4295 every 12 months?

Two industry representatives stated that there is no benefit to MMS in submitting a form that duplicates information on file when a change has not occurred, and there is no apparent reason for MMS to require the filing of Form MMS-4295 every 12 months. One industry representative recommended that this section be deleted.

MMS Response: The MMS requires the annual filing of Form MMS-4295 for use as a control and monitoring mechanism even when there is no change in the applicable contract or rate.

7. Should MMS allow transportation allowances for production which is not royalty bearing.

Several industry representatives suggested deleting this section and proposed that transportation costs be taken as an aggregate charge against the value of lease production or that MMS cover cost allocation methodology in the MMS Royalty Management Program Oil and Gas Payor Handbook. One industry respondent recommended deleting any references concerning the disallowance for transporting lease production which is not royalty bearing.

MMS Response: The MMS will not allow transportation allowances for production which is not royalty bearing. The final regulations in §§ 206.156(b), 206.157(a)(2), 206.157(a)(3), 206.157(b)(3), and 206.157(b)(4) will expressly so provide.

8. Allocation of a cost applicable to more than one product.

One industry representative stated that allocation of costs presents a burdensome administrative task, but if allocation of costs is deemed necessary, it should be allocated on the basis of relative value rather than on relative volume. One business representative suggested that MMS provide an alternative allocation procedure for situations which would require a variance from the proposed allocation method.

Another industry representative recommended that allocation be based on the weighted average value of each product having a commercial value in that area. According to this commenter, transportation costs should not be allocated to by-products or products with no commercial value.

An industry representative suggested using an allocation procedure only when substantial volumes of nonroyalty-bearing products are being transported because of the considerable costs and reporting burdens involved in allocating costs.

MMS Response: The MMS has determined that allocating costs on the basis of relative volume rather than on relative value is more equitable because of the price fluctuations of products and in many instances the allocation of costs based upon value of products would defeat the purpose of the regulations. In situations involving the transportation of both gaseous and liquid products, it is difficult for MMS to provide guidance on acceptable methods of allocation because of the many different circumstances that exist. The MMS believes it would be advantageous to

have the lessee submit an allocation proposal to MMS in these situations.

9. Should MMS extend the period in which to submit a proposed allocation method?

Three representatives from industry and one from a trade organization suggested periods of 90–180 days, instead of the proposed 60-day period, to submit a proposed allocation method where an arm's-length contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract.

Representatives from three oil and gas companies and one trade organization stated that the requirement to submit a proposed allocation method within 60 days will create a significant workload burden, and a more reasonable provision of time would be from 90 to 180 days.

MMS Response: The MMS has modified § 206.157 (a)(3) of the final rule to provide a 3 month period.

10. Should MMS pay interest on lease overpayments?

One industry commenter stated that MMS should pay interest on overpayments consistent with statutory authority.

MMS Response: The MMS currently has no legal authority to pay interest to lessees on their overpayments.

11. Clarification of the conversion process.

Two respondents from the oil and gas industry commented that proposed paragraph (a)(5), concerning the conversion of payment to a dollar-value equivalent, should not be adopted because it is too complicated. If it is retained, it should be clarified with guidelines.

MMS Response: The value of production upon which royalty is due is reported to MMS as a dollar value; therefore, MMS believes that any deduction from that value when determining the royalty due also must be expressed as a dollar value. The MMS does not consider the conversion to a dollar-value equivalent to be complicated. This requirement is included in § 206.157(a)(4) of the final rules.

Section 206.157(b) establishes the procedures for claiming a transportation allowance where the lessee has a non-arm's-length transportation contract or has no contract. The MMS received 142 comments from 32 commenters on this subsection—20 industry commenters, 4 trade groups, 1 Indian trade group, 1 Indian Tribe, 1 State government, 1 city government, and 4 private business representatives.

The comments received under this section addressed eight principal issues: Acceptance of State or FERC tariffs, use of the benchmark system, penalties, prior approval, allowable costs, rate of return, retaining Alternatives 1 and/or 2, and allocation of costs.

1. Should MMS accept published State or FERC tariffs instead of using actual costs as the basis for approving transportation allowances?

Fourteen industry commenters and two trade groups stated that MMS should accept published State or FERC tariffs as the transportation allowance in non-arm's-length and no-contract situations. These commenters believed that MMS should rely on the expertise of FERC and State agencies that set pipeline tariffs to determine fair and reasonable transportation charges. Several industry representatives stated that if MMS does not rely on FERC and/or State tariffs, there would be a wasteful duplication of effort between FERC, State agencies, and MMS.

MMS Response: The MMS has reviewed the FERC procedure for granting tariffs. After careful consideration, MMS has decided that the fairest and best way to determine transportation allowances for non-arm's-length or no-contract situations is to allow actual, reasonable costs plus an acceptable rate of return on the lessee's undepreciated capital equipment. The MMS will recognize FERC tariffs as a valid cost in computing a transportation allowance only when it is an actual (out-of-pocket) expense pursuant to an arm's-length transportation contract. Existence of a FERC-approved tariff for a transportation system, however, is one of the requisite criteria for MMS to consider in granting an exception to the requirement to use actual costs for non-arm's-length or no-contract situations. See discussion below.

2. Should the transportation allowance be based on the market value of transportation service as determined under a benchmark system?

Fourteen industry commenters and four trade groups stated that MMS should allow the market value of the transportation service based on a benchmark system.

For those commenters recommending a benchmark system for determining the transportation allowance, the commenters suggested that MMS allow the lessee the market value of the transportation service based on a benchmark system featuring arm's-length contracts and tariffs and cost accounting to be used only as a last resort. It was suggested that this procedure was in keeping with the market-based concept and objective of bringing certainty to the regulations.

MMS Response: It is MMS's past and present practice to allow only those costs which are directly related to the transportation of lease production. Costs incurred under "comparable arm's-length contracts" or any other benchmark criterion may include costs such as Federal and State income taxes, socioeconomic costs incurred by the lessee in order to obtain State or county land access such as the construction of schools or city sewer facilities. The MMS considered these comments in revising the regulations and decided that it was in the best interests of the Government, States, and Indians to base gas transportation allowances on actual, reasonable costs plus a return on investment.

However, in an effort to simplify procedures for both the lessee and MMS, the regulations at § 206.157(b)(5) will provide a limited exception to the requirement to compute actual costs where the lessor's interest is adequately protected. The lessee must apply to MMS for the exception, and MMS may grant the exception only if (1) the lessee has arm's-length contracts with other persons for transportation through the same transportation system; (2) the lessee has a FERC-approved tariff for the system; and (3) the persons purchasing transportation services from the lessee had a reasonable alternative to using the lessee's system (thus ensuring that the transportation contract price was not arrived at because the person requiring transportation had no choice but to accept the lessee's price). If the MMS grants the exception, the lessee will use as its transportation allowance the volume-weighted average of the prices it charges other persons pursuant to arm's-length contracts.

3. Should a penalty be imposed for late submission of the Form MMS–4295?

One industry commenter objected to the penalty of disallowing a transportation allowance for failure to file the applicable Form MMS–4295.

One industry spokesperson stated that the lessee should be assessed a fee of $10.00 per day for each day the Form MMS–4295 is not received.

One industry commenter suggested 120 days as a reasonable time in which to submit a completed page one of Form MMS–4295.

MMS Response: MMS has determined that the reporting penalties included in the proposed rule were excessive. MMS also has considered the comments on retroactive approvals and has revised the final regulations in § 206.157(b)(1) to allow lessees to request transportation

allowances retroactively for a period of not more than 3 months prior to the first day of the month that the Form MMS-4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. Also, § 206.157(d) provides an interest assessment for taking a transportation allowance without complying with the reporting requirements of the regulations, as well as a requirement that a lessee repay the amount of any deduction disallowed due to the limitation on retroactivity.

4. Should MMS require prior approval for allowances?

Four industry commenters and one trade group commented that they were in support of the self-implementing feature of the regulations which would not require prior approval of each allowance by MMS before the allowance could be claimed.

One State Government and one Indian trade group stated that prior approval of allowances should be required. Because of the numbers of selling arrangements involving costs, these commenters were concerned that as a practical matter MMS will not question or audit the majority of deductions.

One Indian Tribe commenter stated that prior approval should be required before overhead expenses and depreciation are allowed; otherwise, transportation allowances will be subject to abuse and Indian royalties will suffer.

One Indian Tribe representative stated it was not proper to allow depreciation, unless prior approval and prior audit is required.

MMS Response: The MMS currently reviews and approves all transportation allowance requests and has considered preapproval and preaudit of transportation allowances. It has been decided that a more effective use of resources can be attained by doing exception processing on allowances and selectively reviewing certain allowances in depth to determine the propriety of the allowance reported by lessees on Form MMS-4295. Therefore, with limited exceptions, no prior MMS approval will be required. However, the lessee will be required to file a completed Form MMS-4295 before taking the allowance.

5. Should costs other than actual, reasonable costs be considered in calculating the transportation allowance?

One industry commenter, one trade group, and one private business stated that State and Federal income taxes are legitimate expense items and should be allowed.

One industry spokesperson recommended that dismantling costs be included in the calculation of transportation allowances because this is a real cost of doing business.

One trade group representative recommended that MMS reformulate the transportation provisions to allow a firm or entity providing necessary transportation services a complete recovery of costs plus an acceptable profit for assuming the risks involved in providing transportation service.

MMS Response: The MMS views income taxes to be an apportionment of profit rather than a valid operating expense. However, interest on money borrowed for operations would be considered as a valid operating expense. Interest on money borrowed to build a transportation facility is not considered allowable. A return on investment is given in lieu of interest on capital investments.

6. What rate of return should be used to calculate return on capital investment?

Fourteen industry commenters, five trade groups, four private businesses, one city mayor, and one Indian Tribe group stated that the use of the Moody Aaa corporate bond rate proposed by MMS in § 206.157(b) is inequitable for the rate of return. Following are some of the reasons provided by the respondents for this viewpoint.

a. One industry representative stated that the prime rate represents a nearly risk-free return on short-term borrowing.

b. One trade group stated the use of Moody's Aaa bond rate assumes minimal risk and 100-percent debt financing.

c. Three industry commenters and one trade group each stated that, for fairness, a rate of return must consider both cost of credit and equity capital.

d. One industry spokesperson stated that a rate of return based solely on a prime lending rate would not make the investment in the transportation system a competitive project when compared with other projects.

e. One industry, one trade group, and one private business commenter each stated that the choice of Moody's Aaa rated debt is very conservative and arbitrary.

Fifteen industry commenters and four trade groups recommended various alternatives to the Moody Aaa corporate bond rate:

a. Four industry commenters recommended a rate equal to 150 percent of the 20-year T-bill rate.

b. Eleven industry commenters and two trade groups recommended the prime rate plus 5 percent.

c. Three industry commenters and three trade groups suggested one and one-half times the average 30-year T-bill rate.

d. One trade group commenter stated MMS should use the 20-year corporate industrial bond rated Baa.

e. One industry commenter recommended a yearly average of the monthly rate for 20-year T-bills.

f. One industry commenter suggested the 20-year corporate industrial bond rated Baa plus 9 percentage points.

g. One industry commenter recommended one and one-half times the prime rate.

h. Another industry commenter stated that the MMS should use the FERC tariff rate of return.

i. One industry and one trade group supported the before-tax rate of return of double the Moody's Aaa bond rate.

j. One industry commenter suggested that a specific rate of return should be determined for each lessee.

MMS Response: The MMS has examined several options relating to rate of return and decided that a rate of return should be closely associated with the cost of money necessary to build a transportation system. The MMS is not persuaded that a rate of return should include a profitability factor as a part of the transportation allowance. The MMS has examined the use of the corporate bond rate very carefully and has concluded that the use of such a rate would be feasible and would be appropriate for use as a rate of return considering the risks associated with the transportation of gas and gas plant products. There is no doubt that there are some very high risks involved with some oil and gas ventures, such as wildcat drilling. However, the risk associated with building and developing a pipeline to move gas that has already been discovered is a much different risk (and a risk that can reasonably be insured against) than the risk associated with the drilling of a well. Considering the risks related to transportation systems, a rate of return based on an applicable corporate bond rate would be appropriate for transportation systems.

The MMS has considered the prime rate, the prime rate plus 5 points, one and one-half times the average 20-year Treasury Bill rate, the Moody's bond rate, Standard and Poor's bond rate, and the other rates suggested by the commenters. The rate of return used by FERC was not considered because MMS does not believe that the FERC tariff procedure and the MMS transportation allowance are sufficiently similar to warrant the use of similar procedures. The MMS believes that the use of an appropriate rate of return based on the corporate bond rate adequately

considers the risk associated with a transportation system and that there is no rational basis for increasing a rate of return by arbitrarily adding percentage points simply to increase the allowance granted to a lessee. After carefully considering the comments and the options available, MMS determined that the rate of return should be based on Standard and Poor's BBB industrial bond rate. Section 206.157(b)(2)(v) has been revised accordingly in the final rule. However, because of the substantial and diverse comments received on this issue, MMS soon will issue a notice of proposed rulemaking to consider further modifications to this section.

7. Should MMS retain the provisions of Alternative 1 and/or Alternative 2?

Five industry commenters recommended that MMS retain both alternatives of depreciation and return on initial depreciable capital investment. One industry commenter and one trade group stated that both alternatives should be included in any cost-based methodology for determination of a transportation allowance. One industry commenter recommended that both methods be made available for use at the lessee's election on the basis of an individual transportation arrangement basis because adoption of this approach would assure the flexibility necessary to adapt to unforeseen changes in the business and transportation environments.

Two industry commenters and one trade group stated that MMS should retain Alternative 1. One industry spokesperson sought clarification on Alternative 1 to ensure both depreciation and return on depreciated investments are allowed.

One trade group representative endorsed Alternative 2, provided that its use is an option for the lessee. One industry commenter supported Alternative 2, suggesting that the initial capital investment should be the basis for depreciation of any newly acquired transmission facility or gas plant. One trade group representative stated that Alternative 2 should be applicable to instances where a lessee has purchased a transportation system that has previously been depreciated to some extent. One private business representative stated that Alternative 2 should be available without the limitation on new or newly acquired transportation systems because it provides a viable substitute where original cost records no longer exist.

One industry commenter recommended not adopting Alternative 2 because it provides a significantly lower rate of return to the lessee.

Two commenters stated that MMS should not tie the rate of return to a diminishing value. Both commenters stated that if the intention is to provide the lessee with a rate of return for his invested capital, the lessee should not be penalized by a diminishing return caused by tying the return into a depreciation option. One industry representative stated that based on the current Moody's bond rate, Alternative 2 should only be advantageous for projects with over 30 years of life.

One industry commenter stated an inequity could result in the case of transferring transportation facilities from one party to another because it may be impossible to allocate specific capital costs to particular segments for purposes of determining the depreciation cost allowance and the return on undepreciated capital investment cost allowances. One industry commenter stated that MMS should accept a depreciation method recognized by FERC whether or not the method is one of the two suggested. According to the commenter, this would eliminate the administrative burden of maintaining another set of depreciation records. One Federal agency commenter suggested there be no restriction on the depreciation method used.

Seven commenters—five industry, one trade group, and one Federal agency—stated that disallowing recapitalization is inequitable. One industry representative stated that the rule, as proposed, prohibits a new owner from recovering his costs because those costs would be based on the present market value of the pipeline. One industry commenter stated that it would be administratively burdensome to disallow recapitalization because it would require the lessee to maintain two separate sets of books on depreciation, one for normal business and one for royalty purposes. One industry representative stated that prohibiting establishment of a new capital cost based upon the sale or transfer of a pipeline is inconsistent with both the philosophy of arm's-length transactions and of approving an allowance based on actual costs.

Two industry commenters stated that the regulation should be more specific on how the lessee must adjust for continuing changes in reserves. For example, the continued development of different unitized depths in complex geologic areas or in areas with multiple leases will result in the continued redetermination of reserves.

MMS Response: The MMS has reviewed the comments received regarding both Alternative 1 and Alternative 2 and concluded that both alternatives should be retained. However, under the final rule, § 206.157(b)(2)(iv)(B), Alternative 2 can only be used for transportation facilities first placed in service after the effective date of these regulations.

The MMS has considered the issue of recapitalization and decided that it was appropriate for the Government to pay for the depreciation of a system only once.

The MMS has carefully considered the issue of basing the rate of return on a diminishing value and has decided that this procedure is consistent with longstanding Government policy on allowances and that MMS should continue this policy for transportation facilities in operation on the effective date of these regulations.

The use of reserve life as a depreciation method is at the election of the lessee. If the method does not serve the lessee's needs, then a different depreciation method may be chosen. If the reserve life method of depreciation is chosen, it would be entirely appropriate for the lessee to adjust the reserve life when changes in reserves occur.

The MMS has determined that a transportation system may be depreciated only once, and that the depreciation schedule established by the original transporter/lessee cannot be altered by a change in ownership.

8. Should costs be allocated among lease products?

Two industry commenters and one trade group suggested deletion of the sections requiring allocation of costs (§ 206.157(b) (3) and (4) of the final rule). Two industry representatives stated that requiring allocation of transportation costs is an unjustified expense to the lessee and a burdensome administrative task for both industry and MMS.

One industry commenter stated that allocation of costs among products is at odds with the basic valuation equation.

MMS Response: MMS believes that the cost to transport a product should correspond with the product transported. MMS recognizes that accountability is difficult and allocation may be a burdensome task but there is no acceptable way to avoid this responsibility.

Section 206.157(c)

The MMS received a total of 39 comments from 20 different respondents on paragraph (c), which establishes reporting requirements for transportation allowances. Of the 39 comments received, 27 were from

industry, 10 were from industry trade groups, 1 was from a State respondent, and 1 was from an Indian association.

The comments received addressed the following issues: general comments pertaining to the requirement to file for allowances, comments on the initial 90-day submittal period, the subsequent annual requirement to submit Form MMS–4295, Gas Transportation Allowance Report, establishment of alternate reporting dates, and miscellaneous comments.

1. The requirement to submit a Form MMS–4295 in order to claim a transportation allowance.

Two industry commenters commend the MMS for proposing an allowance that does not require prior approval. One industry commenter and one trade group disagree with proposed Form MMS–4295 because it requires too much information and puts a burden on industry. One trade group representative stated that MMS should substitute a form entitled "Intent to Take a Transportation Allowance" in lieu of the complicated annual filings proposed. One State representative stated that the reporting scheme would demand a major commitment of resources and would be difficult to administer. One trade group commenter stated that submission of Form MMS–4295 will greatly increase the paperwork of both industry and MMS. Two industry commenters stated that without proper public review and comment, they cannot endorse the use of Form MMS–4295. Ten commenters—seven industry and three trade groups, stated that provision should be made for allowances currently in effect on the effective date of the regulations to continue until the allowance expires to avoid an undue administrative burden on MMS and lessees.

MMS Response: Form MMS–4295 is required in order for MMS to monitor the transportation allowance program. The MMS believes it can effectively monitor the transportation allowance deductions without the preapproval of the allowances. The MMS has made the information on Form MMS–4295 as clear and uncomplicated as possible considering the complex nature of transportation allowances. The filing of a Form MMS–4295 equates to an "intent to deduct transportation."

For arm's-length contracts, paragraph (c)(1) requires the filing only of page one of the Form MMS–4295. Pursuant to paragraph (c)(2), for non-arm's-length contracts, the lessee must submit the entire form. For transportation allowances in effect on the effective date of these rules, no form needs to be filed until the allowance terminates. See § 206.157 (c)(1)(v) and (c)(2)(v). These continued allowances will be subject to audit.

2. Requirement to file a Form MMS–4295 within 90 days after the end of the reporting period.

One industry commenter stated that a 120-day filing period should be permitted for filing Form MMS–4295 to ease the administrative burden. This commenter suggested that if the form is not received within the prescribed 120 days, the lessee could be assessed a fee of $10.00 per day for each day the form is not received. One industry representative suggested that a minimum 180-day conversion should be allowed from the date of publication of the final regulations.

One trade group representative agreed that a 12-month term should be endorsed for both onshore and offshore allowances. One industry representative recommended that allowances be based on data from a full calendar year and be reported to MMS by April 1 for the preceding year. Nine commenters, seven industry and two trade groups, stated that an annual reporting request is unduly burdensome and that lessees should only be required to file Form MMS–4295 when there is a change in the allowance amount.

Two industry representatives stated that failure to file a completed Form MMS–4295 should not result in a denial of allowances because this constitutes a substantial penalty.

One industry spokesperson stated that to ease MMS's workload, each lessee should be assigned a particular due date for filing all forms. One Indian trade group was concerned over the provision establishing different reporting dates from those specified in order to provide more effective administration.

MMS Response: The final regulations in § 206.157 (c)(1)(iii) and (c)(2)(iii) give the lessee 3 months after the end of the previous reporting period to file the required forms. Also, as described earlier, the final regulations allow for transportation allowances to be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4295 is filed with MMS. Therefore, even if the lessee is not able to timely file the Form MMS–4295, the lessee could file the Form MMS–4295 and claim the transportation allowance on a corrected Form MMS–2014 at a later date.

The MMS concurs with a 12-month term and the final regulations require that a Form MMS–4295 will be filed on the basis of a calendar-year.

3. Miscellaneous comments received.

One industry representative stated that MMS should continue its policy of not requiring reporting or approval of reduction in sales prices which reflect transportation. One industry commenter recommended that deductions taken as an offset against price should be accepted by MMS without the necessity of filing Form MMS–4295.

MMS Response: In situations where the purchaser is reducing the posted price for a transportation cost and the lessee is incurring no out-of-pocket expense, a Form MMS–4295 is not required. In these situations, because the reduction in price represents a cost incurred past the point of first sale, a transportation allowance would not be allowed by the regulations. However, in determining the value of the gas, the reduction in price for the transportation costs past the point of sale would be considered.

Section 206.157(d)

MMS has added a new § 206.157(d) to the final regulations. This section requires a lessee that deducts a transportation allowance from its royalty payments before complying with the requirements of this section (i.e. filing the proper forms) to pay interest from the date it improperly took the deduction until the form is filed.. As noted above, pursuant to paragraph (c), the lessee also will be required to pay back any allowance deducted more than 3 months prior to the first day of the month the proper forms are filed, plus interest.

Section 206.157(e)

This section was proposed as paragraph (d) and provides an adjustment procedure where the estimated allowance differs from the actual allowance.

The MMS received a total of 34 comments, 29 from oil and gas companies and 5 from industry trade groups.

Two industry representatives commented that the MMS proposal for handling interest payments is unfair, and stated that "It is equitable that if the lessee must pay any difference in royalty owed plus interest, MMS should also pay any difference plus interest statutorily authorized."

MMS Response: The MMS has no legal authority to pay interest to lessees on their overpayments.

Ten respondents, including three trade organization representatives and seven oil and gas companies, recommended that positive or negative differences between estimated and actual costs should be rolled forward into the

transportation rate for the subsequent period because this would relieve the immense administrative burden on MMS and industry. One oil and gas company recommended that actual data from one period be used as the allowance for the following period, thus requiring no adjustments.

MMS Response: The MMS considered alternatives such as (1) rolling forward differences into subsequent periods or (2) using actual data from one period to be used as the next period's allowance, but determined that such procedures could be inequitable to lessees, MMS, Indian Tribes, and Indian allottees. Consequently, MMS has decided to retain the estimated and actual cost procedure.

Two oil and gas companies commented that refunds for estimates tendered in excess of actual costs should not be classified as refunds of a royalty payment under section 10 of the OCS Lands Act because estimates are not "actual" payments of royalty. Overpayments could then be treated as line-item adjustments not subject to the refund process. It was the firms' position that the OCS Lands Act, section 10, does not require requests for refunds when estimated costs are less than actual costs and stated that the concept of estimate versus payment is clearly discernible. "Payment" is defined as a discharge of indebtedness, while "estimate" is a rough or approximate calculation, not an overpayment.

One oil and gas company commented that the current extensive review and audit process is causing lessees to lose the time value of money in the refunds which are due them under section 10 of the OCS Lands Act. Audits on such refunds were described as fruitless and wasteful, and it was suggested that MMS consider transportation allowance adjustments to be exceptions to the refund requirements. Overpayments could then be recovered by line-item adjustments on Form MMS-2014.

Two oil and gas companies strongly emphasized that the requirement to submit written requests for refunds for underdeducted transportation costs in accordance with section 10 of the OCS Lands Act will be an extraordinarily difficult financial and reporting burden for industry and the MMS.

MMS Response: It would not be proper for these rules to prescribe the refund procedures. MMS is reviewing the issue and will provide guidance to lessees.

Three oil and gas companies and one trade organization representative rejected using prior year actual costs for the current reporting period, stating that it automatically requires retroactive adjustment. They recommend that lessees be allowed to use forecast rates based on their knowledge and experience with the operations. Three oil and gas companies proposed that MMS establish an allowable range and not require retroactive adjustments if performance is within the allowable range.

One oil and gas company recommended using market-based allowances, requiring a single entry and resulting in fewer adjustments and fewer transportation records to be reviewed. One oil and gas company recommended that to reduce costs, adjustments should be made by a single entry each year, not monthly.

MMS Response: The MMS was unable to develop an acceptable accounting methodology that would eliminate retroactive adjustments of prior period tentative transportation allowances for non-arm's-length and no-contract situations. The final regulations do, however, permit a lessee to adjust its estimates in the succeeding period based on forecasted rates.

Section 206.157(f)

Section 206.157(f) was proposed as paragraph (e) and, as proposed, provided that no cost is allowed for transportation which results from payments for actual or theoretical losses. The MMS received a total of 23 different comments on this section from industry, trade groups, and one U.S. Senator. Generally, the commenters stated that line losses are actual costs of doing business, should be allowable, and that this section of the regulations should be deleted.

Five industry commenters , two trade organizations, and one U.S. Senator commented that line losses are actual transportation costs which should be allowed by MMS. One industry commenter stated that line losses occur beyond the control of the lessee and are practical and legitimate occurrences. Another industry commenter stated that such allowances are real transportation costs borne by the lessee. Seven industry commenters stated that MMS should allow line losses not attributable to negligence.

Three commenters—two industry and one trade group representative—commented that line losses in arm's-length contracts and FERC tariffs should be allowed. One industry commenter stated that if a loss provision is a part of an arm's-length contract or a FERC tariff, MMS should accept such a provision, just as it accepts the dollars-and-cents rates in the contract or tariff because the losses are part of the total cost of the transportation arrangement. One industry representative stated that producer-owned pipelines should include transportation losses as part of operating expenses in the formulation of an allowance. Other commenters recommended deletion of this section.

MMS Response: All of the issues of theoretical and actual line losses have been considered at length by MMS. Because of the difficulty of demonstrating that losses are valid and not the result of meter error or other difficult to measure causes, MMS has decided not to treat line losses as valid costs for purposes of computing transportation allowances in non-arm's-length and no-contract situations. However, the final rule provides that costs associated with payments for losses under arm's-length transportation agreements should be allowed because the payment is an out-of-pocket expense to the lessee.

Section 206.157(g)

The MMS received two comments on § 206.157(g), which was proposed as paragraph (f). This section allows use of the transportation allowance rules where transportation is a component of a valuation procedure such as a net-back method.

Both industry respondents stated that use of cost-based transportation allowances is inequitable when using net-back valuation because actual costs incurred should be recognized. If MMS collects royalty on the enhanced downstream value, MMS should bear its share of actual costs incurred to move the hydrocarbon for sale downstream.

MMS Response: The MMS remains convinced that the cost-based allowance procedure for determining gas transportation allowances is appropriate for determining value under a net-back procedure.

Section 206.158 Processing Allowances—General.

The processing allowance regulations are almost the same as the transportation allowance regulations. As expected, therefore, most of the comments were the same. Because responding to the same comments and explaining the same regulatory section is duplicative and unnecessary, in this section MMS generally will respond only to comments and explain regulatory provisions which are unique to gas processing allowances.

Section 206.158(a)

The MMS received a total of 43 different comments from 27 separate commenting parties on this section of the regulations, which generally provide

for a processing allowance. Of the 43 comments received, 15 were from Indian Tribal representatives, 10 were from oil and gas companies, 4 from local businesses, 3 from industry trade groups, 3 from State agencies, 2 from Indian Tribal trade representatives, 2 from State spokesmen, 2 from local governments, 1 from a State Governor, and 1 from a royalty interest owner.

Comments on gas processing allowances, which did not relate to any specific section of the regulations, are addressed in this section of the gas processing regulations.

One industry representative cautioned that although the final processing regulations must contain certainty, they should also be flexible enough to encourage innovative marketing of the gas plant products. Similarly, one State agency said that the proposed regulations must reflect the changing nature of industry, serve to encourage rather than discourage new projects, and allow existing operations to identify new markets.

MMS Response: The MMS believes that the regulations are complete and sufficiently flexible to accommodate different types of gas processing arrangements that might arise in the future. The MMS further believes that the regulations are reasonable. To not discourage new development, MMS has provided an exception process whereby a lessee may be able to justify a processing allowance in excess of the 66⅔ percent limitation and has provided the lessee with broad latitude to deduct processing costs under arm's-length contracts. For processing under non-arm's-length and no-contract situations, MMS has provided the lessee with several alternatives for depreciation and return on investment. MMS also has provided for an extraordinary cost allowance for processing gas production from a unique gas production operation. MMS does not believe that the objectives of certainty and flexibility should replace the Federal Government's responsibility to properly account for the removal of minerals from a Federal or Indian lease.

One industry commenter and one industry trade organization thought that this section should incorporate a provision to include the deduction of fractionation costs.

One industry commenter and one industry trade representative recommended that processing allowances continue to be granted on the basis of percentage of value.

MMS Response: The regulations, as adopted, accommodate fractionation costs as part of the processing allowance cost. Therefore, a specific provision is not necessary. The MMS has determined that an allowance based on a cost per unit is more equitable and will result in less difference between actual and estimated allowances than an allowance based on percentage, especially in times of rapid price fluctuations.

Section 206.158(b)

The MMS received a total of 21 comments from 9 different commenters on this section, which requires allocation of processing costs among gas plant products. Fifteen comments were received from industry, five from an industry trade organization, and 1 from a Federal agency.

There was general opposition from industry to the allocation of processing allowances by gas plant product. Nine industry representatives and one industry trade group recommended either to delete this section or to rewrite it in such a manner as to allow all processing costs in full to be deducted from the value of both the residue gas and gas plant products. One industry representative proposed a change which would allow the allocation of processing costs to both the value of gas plant products and residue gas.

One industry representative stated that the cost of processing should not be allocated to one product when it benefits all products. One industry trade group stated that the allocation of costs among products is contrary to the valuation principle that the value of production should equal the sum of all gross proceeds less the sum of all post-production costs.

Two industry representatives plus one industry trade group recommended that if allocation of costs is necessary, allocation should be based on percentage of sales rather than on a cost per unit; that is, based on value rather than volume. Two industry representatives and one trade group thought that the allocation of costs presents an administrative burden for both industry and MMS.

MMS Response: It has been a longstanding MMS policy and regulatory requirement that no processing allowance be granted against the value of residue gas. Among the reasons for this is that processing is viewed as necessary to place the residue gas in marketable condition and that processing does not generally enhance the value of residue gas. Thus, generally no processing allowance is authorized against the value of the residue gas in the final rule. The MMS believes that allocating processing costs based on relative volume rather than on relative value is more equitable because the costs of extracting any given product may be unrelated to that product's value.

Section 206.158(c)

As proposed, this section generally limited the processing allowance deduction to two thirds of the value of each gas plant product. The MMS received 82 comments from 36 commenters on this section. Forty-eight comments were received from industry, 16 from industry trade organizations, 1 from an Indian Tribe, 4 from local businesses, 1 from a town mayor, 3 from a State representative, 3 from oil producers, 2 from interest owners, 3 from a State and Tribal organization, and 1 from an Indian trade group.

Most industry-related commenters expressed their objection to the 66⅔-percent limitation on the processing allowance. Nineteen industry representatives, four industry trade groups, four local businesses, one town mayor, and one State representative opposed either the limitation on the allowance or the exclusion of residue gas value from the allowance determination. Other commenters supported this position.

Six industry respondents and one industry trade group questioned the validity of a 66⅔-percent limitation. For example, one industry commenter stated that the limitation is "* * * entirely arbitrary and has no justification or support in the record."

One State representative suggested that the limitation creates a floor and feared that a 66⅔-percent processing allowance will be taken as an automatic deduction.

An industry trade organization commented that in processing a sour, low quality gas stream, the 66⅔-percent limitation does not reflect actual costs to industry. This trade group plus four industry commenters stated that in high-cost or low-quality areas, the limitation will discourage development.

Seven industry commenters and one industry trade group recommended, in lieu of a strict limitation, that the 66⅔-percent level be a threshold, above which an allowance will be granted according to specific criteria. For example, one industry commenter recommended a higher allowance upon MMS approval. Another industry commenter requested that a higher allowance be approved on the basis of "national interest" criteria.

Six industry commenters and three industry trade groups stated that MMS should allow lessees to carry forward processing costs otherwise allowable (except for the 66⅔-percent limitation)

from the current year to subsequent years.

The MMS also received several comments from parties who supported the proposed 66⅔-percent limitation on the processing allowance. Two oil producers, one interest owner, one State representative, and one State and Tribal organization expressed support of the limitation. Another oil producer added that it opposed increasing the limitation. One interest owner stated that the limitation should be lowered.

An additional comment from a State and Tribal organization stated that it favors the exclusion of residue gas from the allowance determination. An Indian trade group stated its objection to the Director approving an allowance in excess of 66⅔-percent.

Six parties (one oil producer, one State representative, one interest owner, two industry parties, and one State and tribal organization) stated their opposition to a "carry forward" provision for costs exceeding the 66⅔-percent limitation. One industry commenter stated that such a process would be "impractical."

MMS Response: The MMS has devoted considerable time and effort in evaluating the 66⅔-percent limitation on the processing allowance, and the exclusion of the value of residue gas from the allowance computation. Section 206.158(c)(2) of the final rule provides that the processing allowance deduction on the basis of an individual product cannot exceed 66⅔ percent (100 percent for sulfur) of the value of each gas plant product at the point of sale determined in accordance with § 206.153. No processing allowance may be taken against the value of the residue gas, except for certain extraordinary allowances specifically approved by MMS in accordance with paragraph (d), discussed below.

The 66⅔ percent limit is to be applied against the value of the product already reduced by any extraordinary cost allowance and any transportation allowance for transportation costs incurred after the gas is processed. Transportation allowances related to transportation from the field to the processing plant would not be deducted before applying the 66⅔ percent limitation.

The MMS has retained in the final rule a procedure whereby the lessee may request an exception from the 66⅔ percent limitation. The lessee must demonstrate that any costs in excess of the limitation are reasonable, actual, and necessary. This procedure will allow MMS to monitor more closely those situations where the allowance based on reasonable, actual costs will be in excess of the 66⅔ percent limitations. Under no circumstances may the processing allowance exceed 100 percent of the value of any product.

Three industry respondents and three industry trade groups stated their objection to the requirement regarding substitution of other products for residue gas in situations where residue gas is absent. One industry trade group stated that in this situation, the lessee should be able to deduct the processing costs against the sum of all marketable products. Two industry commenters recommended that this sentence be deleted.

MMS Response: The MMS has determined that where residue gas is not present, at least one gas plant product should be viewed as being placed in marketable condition as a result of processing. However, the extraordinary processing allowance procedure discussed below may be applicable in these situations.

Section 206.158(d)

The MMS received 37 comments from 26 parties on this section, which provides generally that no processing cost deduction will be allowed for the costs of placing lease production in marketable condition. Twenty comments were from industry parties, 5 comments were from industry trade organizations, 1 comment was from an Indian Tribe, 4 comments were from local businesses, 1 comment was from a town mayor, 1 comment was from a Federal agency, and 4 comments were from individuals.

The major issue raised in this section was whether costs associated with placing a product in marketable condition, generally referred to by the commenters as post-production costs, should be deductible from royalty.

All industry-related commenters (13 industry and 3 industry trade groups), 4 local businesses, and 1 town mayor supported the concept that all post-production costs be allowable deductions from royalty.

Nine industry commenters and two industry trade groups expressed their view that certain post-production costs should be deductible from royalty. One industry trade group stated that the costs related to the manufacture and sale of separately marketable products are extraordinary and should be allowed. One industry commenter stated that "* * * other off-lease post-production costs and certain 'extraordinary' on-lease costs" should be deductible.

MMS Response: MMS already has addressed the post-production cost issue with regard to other sections of these regulations. Generally, post-production costs excluding those for transportation and processing, are not allowable deductions from royalty. Post-production costs for the services of gathering, separation, measurement, dehydration, compression, and sweetening are considered to be a requirement to place the lease production into marketable condition, at no cost to the lessor. These costs generally are not considered part of the processing costs and, therefore, are not deductible in a processing allowance.

MMS has included in the final regulations a new § 206.158(d)(2). Pursuant to this section, if a lessee incurs extraordinary costs for processing gas production from a unique gas production operation, it may apply to MMS for an extra allowance above that to which it otherwise would be entitled pursuant to these regulations. The allowance is discretionary with MMS, but may be granted only if the lessee can demonstrate that the costs are, by reference to standard industry conditions, extraordinary, unusual or unconventional. Under this section, an allowance could be provided against the value of the residue gas. The extraordinary cost allowance requires annual reconsideration by MMS.

Section 206.159 Determination of processing allowances.

Section 206.159(a)

The MMS received a total of 53 comments from 27 different commenters. Sixteen different industry representatives provided 37 comments, 4 industry trade groups provided 9 comments, 4 Indian Tribal representatives provided 4 comments, and one comment each was provided from an Indian Tribal trade representative, an accounting firm, and a State and Tribal organization.

Again, most of the issues raised in the comments were the same as for the corresponding section of the transportation allowance regulations and will not be repeated.

Two industry commenters responded in favor of the provision in § 206.159(a)(1) whereby MMS would accept costs incurred under arm's-length processing agreements as the reasonable, actual costs incurred by the lessee because they thought these arrangements reflect true processing costs experienced by the lessee. One Indian Tribal trade group opposed this proposal because of the concern that under these procedures the Indian lessor's royalty could be reduced to virtually nothing.

MMS Response: The MMS believes that processing costs incurred by a lessee under arm's-length agreements represent actual costs to the lessee and should be appropriate as a processing allowance. Under the provisions of these regulations, the Indian lessor's royalty cannot be reduced to zero.

With regard to the requirement of § 206.159(a)(2) that processing costs be allocated among all products, one industry commenter was critical of the proposal to treat all NGL's (but no other plant products) as one product. The commenter thought this was discriminatory toward the lessees in favor of processors of wet gas, not only because some lessees typically will be able to recover total processing costs from the value of the NGL's, but if other products are produced, costs would need to be allocated to them, with the possibility that some of these costs would not be totally recovered. This industry representative stated that all of the marketable products should be treated as one product, including residue gas, for purposes of allocating processing costs. Another industry representative made proposals which would make the allocation procedure unnecessary.

MMS Response: The NGL's, historically, have been considered one plant product for royalty purposes because they are commonly extracted first as raw make at an extraction facility. MMS has determined that all other individual plant products must be evaluated separately for processing allowances for the reasons stated previously.

Section 206.159(b)

The MMS received 128 comments from 34 commenters on § 206.159(b), which provides for a processing allowance determination where the lessee has a non-arm's-length contract for processing or no contract. One hundred comments were from industry commenters, 19 were from industry trade organizations, 2 were from a State representative, 1 was from a Federal agency, 1 was from an interest owner, 4 were from local businesses, and 1 was from a town mayor.

The major issues addressed regarding this section were (1) the requirement of a lessee's actual costs versus use of a benchmark system, (2) the use of "Alternative 1" or "Alternative 2" for depreciation or a return on capital investment, and (3) the rate of return on capital investment. These issues are basically the same as for the transportation allowance and have been responded to. However, some comments were specific to processing costs.

Seventeen industry and four industry trade organizations disagreed with the proposal under this section to base allowances on cost accounting procedures.

Six industry commenters and two industry trade groups explicitly voiced their support for a market value concept; i.e., MMS should accept the market value of service for the allowance determination. One industry commenter added that under the proposed methodology, MMS ignores "competitive market forces." Another industry commenter requested that MMS adopt a "market-oriented" approach. Still another industry commenter stated that if a non-arm's-length contract for processing reflects the market value for that service, it should be acceptable.

Twelve industry commenters and four industry trade commenters specifically recommended that MMS should adopt a benchmark system for allowance determinations under this section. These commenters suggested that comparable arm's-length contracts be used to determine the allowance for non-arm's-length processing arrangements in the same facility. One of the industry commenters added that the use of comparable arm's-length contracts will reduce the number of adjustments and other records to be filed.

One State representative opposed a benchmark system.

Four industry commenters and one industry trade group complained that cost accounting is a departure from the valuation requirements and that it discriminates against lessee affiliates.

Another industry commenter recommended that if plant ownership interest is sufficiently small, it should be treated as an arm's-length arrangement.

MMS Response: The MMS considered a benchmark valuation system featuring comparable arm's-length contracts to determine processing allowances, with cost accounting being used as a last resort. MMS concluded that such a procedure is not the fairest and best way to determine gas processing allowances considering the overall interests of industry, the Federal Government, States, and Indian Tribes. The MMS does not believe that allowances generally should be valued on a "market-based system" the way products are valued for royalty determination purposes for several reasons.

First, if the benchmark valuation system were used to determine processing allowances, virtually any MMS oversight of the allowance program would be eliminated. Second, the determination of an allowance on a "market-based system" would not be representative of a lessee's actual, reasonable costs. Third, if one lessee bases its allowance on actual costs, and another lessee processing gas in the same facility bases its allowance on market value, an inequity will result.

For these reasons, MMS has decided that generally the gas processing allowance is best determined on actual, reasonable costs plus a return on undepreciated capital investment, or its initial capital investment. However, MMS has included in § 206.159(b)(4) of the final rules a provision whereby a lessee may apply to MMS for an exception from the requirement to use actual costs. MMS may grant such an exception, at its discretion, only if three conditions are met: (1) The lessee has arm's-length contracts for processing other gas production at the same processing plant; (2) at least 50 percent of the gas processed at the plant is processed pursuant to arm's-length processing contracts; and (3) the persons purchasing processing services from the lessee had a reasonable alternative to processing at the lessee's plant. If the exception is granted, the lessee must use as its allowance the volume-weighted average of the prices it charges other persons pursuant to arm's-length contracts at the same plant. MMS is satisfied that if these conditions are met, the processing allowance will reflect the market and that MMS will be able to monitor the use of these allowances.

Two industry commenters stated that State and Federal income taxes should be considered as allowable costs on the premise that such costs are real, tangible costs to the lessee.

Two other industry commenters suggested that plant dismantling and abandonment costs should be allowable, advising that such costs are a real cost of doing business.

MMS Response: The MMS views income taxes to be an apportionment of profit rather than a valid operating expense. Therefore, income taxes are not an appropriate expense that should be included in the processing allowance. The MMS takes the position that because it does not participate in the profit or losses from the sale of processing facilities, no costs for dismantling and abandonment should be included in processing allowances.

The basic issue regarding requirements to allocate processing costs among all plant products is discussed under § 206.158(b). However, specific comments pertaining to the allocation under non-arm's-length and no-contract situations are discussed here.

Three industry commenters disagreed with the requirement to allocate costs on generally accepted oil and gas accounting principles. One of these commenters recommended deleting this requirement. The other two commenters advised that generally accepted principles for cost allocation do not exist. One commenter suggested instead that allocations be based on (1) cost-benefit analysis, and (2) cause-and-effect relationships.

One industry commenter recommended that this requirement be modified to include an allocation of costs to residue gas.

MMS Response: The MMS believes that, if cost-benefit analysis and cause-and-effect relationships are generally acceptable procedures in cost allocation, these procedures would be acceptable to MMS. MMS will consider cost allocation procedures for unique situations on the basis of individual cases in order to arrive at an equitable allocation procedure. As stated previously, MMS believes that it is not appropriate to allocate processing costs to residue gas.

Section 206.159(c)

The MMS received 28 comments from 19 respondents on this section which addresses reporting requirements for processing allowances. Twenty comments were from industry parties, 7 from industry trade organizations, and 1 was from an Indian Tribe. Again, this section is virtually identical to the corresponding provision for transportation allowances, and the response to comments for that section is, for the most part, applicable here.

The two major areas of concern were (1) use of Form MMS–4109, and (2) the terms of the reporting periods and filing timetables.

Five industry commenters, two industry trade groups, and one Indian Tribe expressed some opposition to Form MMS–4109. One industry respondent and one industry trade group objected to commenting on the form until it is published, adding that it should not conflict with any rights of the lessee. Four industry commenters and one industry trade group opposed the filing of Form MMS–4109 at all. One of the four industry commenters stated that processing rates under an arm's-length or non-arm's-length contract should be accepted at face value. The industry trade group claimed that filing of the form would be an unnecessary burden for both industry and MMS. Another industry commenter stated that it opposed any reporting requirements such as annual renewals or contract change updates. The Tribe opposed industry taking an allowance on the honor system and merely filing a form to claim it.

MMS Response: The MMS believes that Form MMS–4109 must be required in order for MMS to monitor the processing allowance program. The MMS believes it can effectively monitor the processing allowance deductions without the preapproval of the allowances. The MMS has made the information on Form MMS–4109 as clear and uncomplicated as possible considering the complex nature of processing allowances. The filing of a Form MMS–4109 does not conflict with any lease provisions or rights of the lessees. The MMS agrees that the proposed procedure for determining a processing allowance places a great deal of reliance on the gas industry. However, this program will be under continuous review and oversight by MMS. Thus, the ability to effectively review, evaluate, and audit processing allowances has been maintained under the new regulations.

The initial concern about reporting periods was MMS's proposal to create a new reporting period for all allowances which would commence the date the new regulations are effective. Five industry commenters and three industry trade groups opposed this, recommending instead that all existing allowances be grandfathered under the new regulations. Another industry commenter requested 180 days for conversion to the new reporting period.

Another topic addressed by the respondents was the term of the reporting period. Six industry commenters and one industry trade group favored a reporting period that extends as long as the contract terms are effective, instead of an arbitrary 12-month period. One of the industry commenters stated that resources are wasted by requiring the lessee to file year after year even though there are no changes. However, one industry commenter and one industry trade group endorsed the 12-month reporting period. The industry commenter specifically requested a calendar-year period.

Two industry commenters recommended a longer grace period in which to file subsequent Forms MMS–4109. These commenters both suggested 120 days to file updated forms.

MMS Response: The MMS concurs with a 12-month term and the regulations have been changed to allow filing of Form MMS–4109 by calendar year. The regulations have also been changed to allow a grace period of 3 months. The MMS also decided that existing allowances will continue in effect until they expire, subject to later audit, with the exception of processing allowances for OCS production which are based on non-arm's-length or no-contract situations. Because these allowances are based upon a procedure radically different from the procedure adopted in the final rule, they will continue in effect until they expire or until the end of the calendar year, whichever occurs first.

Section 206.159(d)

This section is the same as for transportation allowances. If a lessee deducts a processing allowance without filing the proper forms, it will owe interest on the amount of the deduction until the proper forms are filed, subject to the 3-month retroactivity provision.

Section 206.159(e)

The MMS received 21 comments from 12 commenters on this section. Eighteen comments were from industry, and 3 were from industry trade organizations.

As with transportation allowance adjustments, the issues were (1) the requirement to file adjustments, (2) the refund procedure under section 10 of the OCS Lands Act, and (3) the payment of interest.

It was the general consensus that adjustments were a very large burden on both industry and MMS and that some way should be found to eliminate the need for so many adjustments resulting from differences between actual and estimated processing allowances. Six industry representatives and two industry trade groups recommended that positive or negative differences between estimated and actual costs should be rolled forward into the processing allowance for the subsequent period, or prospectively.

One industry commenter asserted that retroactive adjustments should not be necessary if the actual allowance falls within an allowable range of the estimated allowance, and two other industry commenters suggested rolling forward small differences into next year's costs within an allowable range.

One industry commenter proposed single entry adjustments for an entire year instead of month-by-month adjustments. This party also made the comment that if a market-based allowance was permitted, it would be more certain and fewer adjustments would be necessary.

MMS Response: The MMS expended considerable effort in an attempt to

arrive at an accounting methodology that would eliminate retroactive adjustments of processing allowances and continue to be fair to industry, MMS, and Indian lessors, but was unable to do so.

One industry representative stated that overpayments, when estimates were less than actual costs, should not be judged as refunds of a payment of royalty under section 10 of the OCS Lands Act because estimates are not "actual" payments of royalty. Overpayments could then be treated as line-item adjustments not subject to the refund process.

MMS Response: The refund procedure will not be specified in these regulations. MMS is reviewing the issue and will provide guidance to the lessees on refund procedures.

Three industry representatives commented that the MMS-proposed procedure for handling interest payments was not fair. These commenters believed that if the lessee must pay any difference plus interest, MMS should also pay any difference plus any interest statutorily authorized. Another issue of concern was the payment of interest requirement.

MMS Response: The MMS has no legal authority to pay interest to lessees on their overpayments.

Section 206.159(f)

This section requires that the provisions in this section will apply to determine processing costs in situations where value must be established under other methods such as net-back.

The MMS received one comment on this section. One industry commenter recommended that the definition of "net-back method" be clarified.

MMS Response: A definition of the net-back method has been included in § 206.151, which is slightly different from that proposed. The MMS believes this revised definition clarifies MMS's intent.

IV. Procedural Matters

Executive Order 12291

The Department of the Interior (DOI) has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. This proposed rulemaking is to consolidate Federal and Indian gas royalty valuation regulations, to clarify the DOI gas royalty valuation policy, and to provide for consistent royalty valuation policy among all leasable minerals.

Regulatory Flexibility Act

Because this rule primarily consolidates and streamlines existing regulations for consistent application, there are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this rule. Therefore, the DOI has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

The information collection and recordkeeping requirements located at §§ 206.157 and 206.159 of this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0075.

Lessee reporting requirements will be reduced. All gas sales contracts, transportation agreements and gas processing contracts, as well as any other agreements affecting value, will be required to be retained by the lessee, but will only be required to be submitted upon request rather than routinely, as under the existing regulations.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Part 202

Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 206

Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated:

Assistant Secretary Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR Parts 202 and 206 are amended as follows:

TITLE 30—MINERAL RESOURCES

CHAPTER II—MINERALS MANAGEMENT SERVICE, DEPARTMENT OF THE INTERIOR

Subchapter A—Royalty Management

PART 202—ROYALTY RATES AND RENTALS

1. The authority citation for Part 202 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

§§ 202.150, 202.151 and 202.152 [Redesignated as §§ 202.100, 202.53 and 202.52]

2. Sections 202.150, 202.151 and 202.152 of Subpart D are redesignated as new §§ 202.100 under Subpart C, 202.53 and 202.52 under Subpart B, respectively.

3. A new Subpart D consisting of §§ 202.150, 202.151, and 202.152 is added to read as follows:

Subpart D—Federal and Indian Gas

Sec.
202.150 Royalty on gas.
202.151 Royalty on processed gas.
202.152 Standards for reporting and paying royalties on gas.

Subpart D—Federal and Indian Gas

§ 202.150 Royalty on gas.

(a) Royalties due on gas production from leases subject to the requirements of this Part, except helium produced from Federal leases, shall be at the rate established by the terms of the lease. Royalty shall be paid in value unless MMS requires payment in kind. When paid in value, the royalty due shall be the value, for royalty purposes, determined pursuant to Part 206 of this title multiplied by the royalty rate in the lease.

(b) All gas (except gas unavoidably lost from the lease site or used on, or for the benefit of, the lease, including that gas used off-lease for the benefit of the lease when such off-lease use is permitted by the appropriate agency) produced from a Federal or Indian lease to which this Part applies is subject to royalty. Where the terms of any lease are inconsistent with this section, the lease terms shall govern to the extent of that inconsistency.

(c) If BLM determines that gas was avoidably lost or wasted from an onshore lease, or that gas was drained from an onshore lease for which compensatory royalty is due, or if MMS

determines that gas was avoidably lost or wasted from an OCS lease, then the value of that gas shall be determined in accordance with Part 206 of this title.

(d) In those instances where the lessee of any lease committed to a Federally approved unitization or communitization agreement does not actually take the proportionate share of the production attributable to its Federal or Indian lease under the terms of the agreement, the full share of production attributable to the lease under the terms of the agreement nonetheless is subject to the royalty payment and reporting requirements of this title. The value for royalty purposes of that production will be determined in accordance with Part 206 of this title. In applying the requirements of Part 206, the circumstances involved in the actual disposition of the portion of the production to which the lessee was entitled but did not take shall be considered as controlling in arriving at the value for royalty purposes of that portion, as if the person actually selling or disposing of the production were the lessee of the Federal or Indian lease.

§ 202.151 Royalty on processed gas.

(a) A royalty as provided in the lease shall be paid on the value of the residue gas and all gas plant products resulting from processing the gas produced from a lease subject to this part. The MMS shall authorize a processing allowance for the reasonable, actual costs of processing the gas produced from Federal and Indian leases. Processing allowances shall be determined in accordance with Subpart D of Part 206 of this title.

(b) A reasonable amount of residue gas shall be allowed royalty free for operation of the processing plant, but no allowance shall be made for boosting residue gas or other expenses incidental to marketing, except as provided in Part 206 of this title.

(c) No royalty is due on residue gas, or any gas plant product resulting from processing gas, which is reinjected into a reservoir within the same lease, unit area, or communitized area, when the reinjection is included in a plan of development or operations and the plan has received BLM or MMS approval for onshore or offshore operations, respectively, until such time as they are finally produced from the reservoir for sale or other disposition off-lease.

§ 202.152 Standards for reporting and paying royalties on gas.

(a)(1) Gas volumes and Btu heating values, if applicable, shall be determined under the same degree of water saturation. Gas volumes shall be reported in units of one thousand cubic feet (mcf), and Btu heating value shall be reported at a rate of Btu's per cubic foot, at a standard pressure base of 14.73 pounds per square inch absolute (psia) and a standard temperature base of 60 °F, except that for OCS leases in the Gulf of Mexico, gas volumes and Btu heating values shall be reported at a standard pressure base of 15.025 psia and a standard temperature base of 60 °F. Gas volumes and Btu heating values shall be reported, for royalty purposes, on the same water vapor saturated or unsaturated basis prescribed by Federal Energy Regulatory Commission (FERC) regulation, or on the basis prescribed in the lessee's gas sales contract provided that the sales contract does not conflict with FERC regulation.

(2) The frequency and method of Btu measurement as set forth in the lessee's contract shall be used to determine Btu heating values for reporting purposes. However, the lessee shall measure the Btu value at least semiannually by recognized standard industry testing methods even if the lessee's contract provides for less frequent measurement.

(b)(1) Residue gas and gas plant product volumes shall be reported as specified in this paragraph.

(2) Carbon dioxide (CO_2), nitrogen (N), helium (He), residue gas, and any other gas marketed as a separate product shall be reported by using the same standards specified in paragraph (a) of this section.

(3) Natural gas liquids (NGL) volumes shall be reported in standard U.S. gallons (231 cubic inches) at 60 °F.

(4) Sulfur (S) volumes shall be reported in long tons (2,240 pounds).

PART 206—PRODUCT VALUATION

1. The authority citation for Part 206 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. The title of Subpart A is changed to read "Subpart A—General Provisions" and a new § 206.10 is added to Subpart A to read as follows:

Subpart A—General Provisions

§ 206.10 Information collection.

The information collection requirements contained in Part 206 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The forms and approved OMB clearance numbers are as follows:

Form No., name, and filing date	OMB No.
MMS-4109—Gas Processing Allowance Summary Report—due within 3 months following the last day of the month for which an allowance is claimed, unless a longer period is approved by MMS	1010-0075
MMS-4110—Gas Transportation Allowance Report—due within 3 months following the last day of the month for which an allowance is claimed, unless a longer period is approved by MMS	1010-0061
MMS-4295—Gas Transportation Allowance Report—due within 3 months following the last day of the month for which an allowance is claimed unless a longer period is approved by MMS	1010-0075

The information is being collected by the Department of the Interior to meet its congressionally mandated accounting and audit responsibilities relating to Federal and Indian mineral royalty management. The information will be used to determine the transportation and processing allowances that may be deducted from royalty payments due on Federal and Indian lands. The reports are required to receive a benefit.

§§ 206.106 and 206.107 [Removed]

3. Sections 206.106 and 206.107 are removed from Subpart C.

4. The Table of Contents for Subpart D is revised to read as follows:

Subpart D—Federal and Indian Gas

5. Sections 206.150, 206.151, and 206.152 are revised and new §§ 206.153, 206.154, 206.155, 206.156, 206.157, 206.158, and 206.159 are added to read as follows:

§ 206.150 Purpose and scope.

(a) This subpart is applicable to all gas production from Federal and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation).

(b) If the specific provisions of any statute, treaty, or oil and gas lease subject to the requirements of this Part are inconsistent with any regulation in this Part, then the lease, statute, or treaty provision shall govern to the extent of that inconsistency.

(c) All royalty payments made to MMS or to any Tribe or allottee are subject to audit and adjustment.

(d) The regulations in this Part are intended to ensure that any responsibilities of the United States with respect to the administration of Indian oil and gas leases are discharged in accordance with the requirements of the governing mineral leasing laws, treaties, and lease terms.

§ 206.151 Definitions.

For purposes of this Part (and Parts 202, 203, 207, 210 and 241 of this chapter):

"Allowance" means an approved or an MMS-initially accepted deduction in determining value for royalty purposes. "Processing allowance" means an allowance for the reasonable, actual costs incurred by the lessee for processing gas, or an approved or MMS-initially accepted deduction for costs of such processing, determined pursuant to this subpart. "Transportation allowance" means an allowance for the reasonable, actual costs incurred by the lessee for moving unprocessed gas, residue gas, or gas plant products to a point of sale or point of delivery off the lease, unit area, communitized area, or away from a processing plant, excluding gathering, or an approved or MMS-initially accepted deduction for costs of such transportation, determined pursuant to this subpart.

"Area" means a geographic region at least as large as the defined limits of an oil and/or gas field, in which oil and/or gas lease products have similar quality, economic, and legal characteristics.

"Arm's-length contract" means a contract or agreement between independent, nonaffiliated persons which reflects the total consideration actually transferred directly or indirectly from the buyer to the seller for the gas, residue gas, or gas plant products. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person. For purposes of this section, based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership:

(1) Ownership in excess of 50 percent constitutes control;

(2) Ownership of 20 through 50 percent creates a presumption of control; and

(3) Ownership of less than 20 percent creates a presumption of noncontrol.

Notwithstanding any other provisions of this section, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. The MMS may require the lessee to certify ownership control. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for that production month as well as when the contract was executed.

"Audit" means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal and Indian leases.

"BIA" means the Bureau of Indian Affairs of the Department of the Interior.

"BLM" means the Bureau of Land Management of the Department of the Interior.

"Compression" means the process of raising the pressure of gas.

"Condensate" means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

"Contract" means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

"Field" means a geographic region situated over one or more subsurface oil and gas reservoirs encompassing at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields are usually given names and their official boundaries are often designated by oil and gas regulatory agencies in the respective States in which the fields are located. Outer Continental Shelf (OCS) fields are named and their boundaries are designated by MMS.

"Gas" means any fluid, either combustible or noncombustible, hydrocarbon or nonhydrocarbon, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely. It is a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.

"Gas plant products" means separate marketable elements, compounds, or mixtures, whether in liquid, gaseous, or solid form, resulting from processing gas, excluding residue gas.

"Gathering" means the movement of lease production to a central accumulation and/or treatment point on the lease, unit or communitized area, or to a central accumulation or treatment point off the lease, unit or communitized area as approved by BLM or MMS OCS operations personnel for onshore and OCS leases, respectively.

"Gross proceeds" (for royalty payment purposes) means the total monies and other consideration paid to an oil and gas lessee for the disposition of unprocessed gas, residue gas, or gas plant products. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as compression, dehydration, measurement, and/or field gathering to the extent that the lessee is obligated to perform them at no cost to the Federal Government or Indian lessor, and payments for gas processing rights. Gross proceeds, as applied to gas, also includes but is not limited to: take-or-pay payments; reimbursements for severance taxes; and other reimbursements. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal or Indian royalty interest may be exempt from taxation. Payments or credits for advanced exploration or development costs or prepaid reserve payments that are subject to recoupment through credits against the purchase price or through reduced prices in later sales and which are made before production commences become part of gross proceeds as of the time of first production. Monies and other consideration including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

"Indian allottee" means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation.

"Indian Tribe" means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any land or interest in land is held in trust by the United States or which is subject to Federal restriction against alienation.

"Lease" means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products—or the land area covered by that authorization, whichever is required by the context.

"Lease products" means any leased minerals attributable to, originating from, or allocated to Outer Continental

Shelf or onshore Federal or Indian leases.

"Lessee" means any person to whom the United States, an Indian Tribe, or an Indian allottee issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

"Like-quality lease products" means lease products which have similar chemical, physical, and legal characteristics.

"Marketable condition" means lease products which are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area.

"Minimum royalty" means that minimum amount of annual royalty that the lessee must pay as specified in the lease or in applicable leasing regulations.

"Net-back method" (or work-back method) means a method for calculating market value of gas at the lease when value cannot be calculated on the basis of gas or gas plant products of comparable value. Under this method, costs of transportation, processing, or manufacturing are deducted from the ultimate proceeds received for the gas, residue gas or gas plant products, and any extracted, processed, or manufactured products to ascertain value at the lease.

"Net output" means the quantity of residue gas and each gas plant product that a processing plant produces.

"Net profit share" (for applicable Federal and Indian leases) means the specified share of the net profit from production of oil and gas as provided in the agreement.

"Outer Continental Shelf (OCS)" means all submerged lands lying seaward and outside of the area of land beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

"Person" means any individual, firm, corporation, association, partnership, consortium, or joint venture.

"Posted price" means the price, net of all adjustments for quality and location, specified in publicly available price bulletins or other price notices available as part of normal business operations for quantities of unprocessed gas, residue gas, or gas plant products in marketable condition.

"Processing" means any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes which normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression, are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing.

"Residue gas" means that hydrocarbon gas consisting principally of methane resulting from processing gas.

"Section 6 lease" means an OCS lease subject to section 6 of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. 1335.

"Selling arrangement" means the individual contractual arrangements under which sales or dispositions of gas, residue gas and gas plant products are made. Selling arrangements are described by illustration in the MMS Royalty Management Program Oil and Gas Payor Handbook.

"Spot sales agreement" means a contract wherein a seller agrees to sell to a buyer a specified amount of unprocessed gas, residue gas, or gas plant products at a specified price over a fixed period, usually of short duration, which does not normally require a cancellation notice to terminate, and which does not contain an obligation, nor imply an intent, to continue in subsequent periods.

"Take-or-pay payment" means any payment received by a lessee under a "take-or-pay" clause in a sales contract. Such clauses normally require the purchaser to take or, failing to take, to pay for a specified minimum volume or other measure of lease products.

"Warranty contract" means a long-term contract entered into prior to 1970, including any amendments thereto, for the sale of gas wherein the producer agrees to sell a specific amount of gas and the gas delivered in satisfaction of this obligation may come from fields or sources outside of the designated fields.

§ 206.152 Valuation standards—unprocessed gas.

(a)(1) This section applies to the valuation of all gas that is not processed and all gas that is processed but is sold or otherwise disposed of by the lessee pursuant to an arm's-length contract prior to processing. Where the lessee's contract includes a reservation of the right to process the gas and the lessee exercises that right, or where the lessee's contract for the sale of gas prior to processing provides for the value to be determined based upon a percentage of the purchaser's proceeds resulting from processing the gas, § 206.153 shall apply instead of this section. This section also applies to processed gas which must be valued prior to processing in accordance with § 206.155.

(2) The value, for royalty purposes, of gas subject to this section shall be the value of gas determined pursuant to this section less applicable allowances determined pursuant to this subpart.

(3)(i) For any Indian leases which provide that the Secretary may consider the highest price paid or offered for a major portion (major portion) in determining value for royalty purposes, if data are available to compute a major portion MMS will, where practicable, compare the value determined in accordance with this section with the major portion. The value to be used in determining the value for royalty purposes shall be the higher of those two values unless MMS determines that the value for royalty purposes determined in accordance with the other provisions of this section is the highest reasonable royalty value.

(ii) For purposes of this paragraph, major portion means the highest price paid or offered at the time of production for the major portion of gas production from the same field. The major portion will be calculated using like-quality gas from the same field (or, if necessary to obtain a reasonable sample, from the same area) for each month. All such sales will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent (by volume) plus 1 mcf of the gas (starting from the bottom) is sold.

(b)(1) The value of gas which is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee. The value which the lessee reports, for royalty purposes, is subject to monitoring, review, and audit. In conducting these reviews and audits, MMS will determine whether the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the gas, or whether there may be factors which would cause the contract not to be arm's-length. The MMS may direct a lessee to pay royalty based upon a different value if it determines that the lessee's reported value is inconsistent with the requirements of these regulations.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, the value of gas sold pursuant to a warranty contract shall be determined by MMS, and due consideration will be given to all valuation criteria specified in this

section. The lessee must request a value determination in accordance with paragraph (g) of this section for gas sold pursuant to a warranty contract; *Provided, however,* that any value determination for a warranty contract in effect on the effective date of these regulations shall remain in effect until modified by MMS.

(3) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer for the gas.

(c) The value of gas subject to this section which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following paragraphs (c)(1) through (c)(4) of this section.

(1) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the lessee's (including any affiliates of the lessee) gross proceeds derived from, or paid under, comparable arm's-length contracts for purchases, sales, or other dispositions of like-quality gas in the same field or area. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: Price, time of execution, duration, market or markets served, terms, quality of gas, volume, and such other factors as may be appropriate to reflect the value of the gas;

(2) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract) provided that those gross proceeds are equivalent to the gross proceeds under comparable arm's-length contracts between other persons for purchases, sales, or other dispositions of like-quality gas in the same field or area. Comparability shall be determined using the same criteria as specified in paragraph (c)(1) of this section;

(3) A value determined by consideration of other information relevant in valuing like-quality gas, including gross proceeds under arm's-length contracts for like-quality gas in nearby fields or areas, posted prices for gas, prices received in arm's-length spot sales of gas, other reliable public sources of price or market information, and other information as to the particular lease operation or the saleability of the gas; or

(4) A net-back method or any other reasonable method to determine value.

(d) Notwithstanding any other provisions of this section, except paragraph (h) of this section, if the maximum price permitted by Federal law at which gas may be sold is less than the value determined pursuant to this section, then MMS shall accept such maximum price as the value. This limitation shall not apply to gas sold pursuant to a warranty contract and valued pursuant to paragraph (b)(2) of this section.

(e)(1) Where the value is determined pursuant to paragraph (c)(2) of this section, the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) Any Federal or Indian lessee will make available upon request to the authorized MMS, State, or Indian representatives, or to the Office of the Inspector General of the Department of the Interior, the General Accounting Office or other person authorized to receive such information, arm's-length sales and volume data for like-quality production sold, purchased or otherwise obtained by the lessee from the field or area or from nearby fields or areas.

(3) A lessee shall notify MMS if it has determined value pursuant to paragraph (c) (3) or (4) of this section. The notification shall be by letter to the MMS Associate Director for Royalty Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this section is a one-time notification due no later than the month the lessee first reports royalties on a Form MMS-2014 using a valuation method authorized by paragraph (c) (3) or (4) of this section, and each time there is a change in a method under paragraph (c) (3) or (4) of this section.

(f) If MMS determines that a lessee has not properly determined value, the lessee shall pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also pay interest computed pursuant to 30 CFR 218.54. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(g) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method, and may use that method in determining value for royalty purposes until MMS issues its decision. The lessee shall submit all available data relevant to its proposal. The MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (f) of this section.

(h) Notwithstanding any other provision of this section, under no circumstances shall the value for royalty purposes be less than the gross proceeds accruing to the lessee for lease production, less applicable allowances determined pursuant to this subpart.

(i)(1) The lessee is required to place gas in marketable condition at no cost to the Federal Government or Indian lessor unless otherwise provided in the lease agreement or this section. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the gas in marketable condition.

(2) If the lessee incurs extraordinary costs for the gathering, compression, dehydration, or sweetening of gas production subject to this section from frontier or deep-water areas, or from a gas production operation recognized by MMS as unique, and those costs relate to unusual or unconventional operations, it may apply to MMS for an allowance. Such an allowance may be granted only if:

(i) The costs are associated with leases located north of the Arctic Circle, the costs are associated with OCS leases located in water depths in excess of 400 meters, or the costs are associated with a unique gas production operation which MMS approves as eligible for the provisions of this paragraph; and

(ii) The lessee can demonstrate that the costs are, by reference to standard industry conditions and practice, extraordinary, unusual, or unconventional.

(3) The MMS shall determine the amount of the extraordinary cost allowance which shall remain in effect for the period specified in the approval, not to exceed 1 year. To retain the authority to deduct the allowance, the lessee must report the deduction to MMS at the end of the approval period, and annually thereafter, in a form and

manner prescribed by MMS. The MMS annually shall reconsider whether a unique gas production operation will continue to be eligible for an extraordinary cost allowance determined in accordance with this paragraph. Extraordinary cost allowance deductions are subject to monitoring, review, audit, and adjustment.

(j) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. If there is no contract revision or amendment, and the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of gas.

(k) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by the MMS of value under this section shall be considered final or binding as against the Federal Government, its beneficiaries, the Indian Tribes, or allottees until the audit period is formally closed.

(l) Certain information submitted to MMS to support valuation proposals, including transportation or extraordinary cost allowances, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or other Federal Law. Any data specified by law to be privileged, confidential, or otherwise exempt may be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2. Nothing in this section is intended to limit or diminish in any manner whatsoever the right of an Indian lessor to obtain any and all information as such lessor may be lawfully entitled from MMS or such lessor's lessee directly under the terms of the lease, 30 U.S.C. 1733, or other applicable law.

§ 206.153 Valuation standards—processed gas.

(a)(1) This section applies to the valuation of all gas that is processed by the lessee and any other gas production to which this part applies and that is not subject to the valuation provisions of § 206.152 of this part. This section applies where the lessee's contract includes a reservation of the right to process the gas and the lessee exercises that right, or where the lessee's contract for the sale of gas prior to processing provides for the value to be determined based upon a percentage of the purchaser s proceeds resulting from processing the gas.

(2) The value, for royalty purposes, of gas subject to this section shall be the combined value of the residue gas and all gas plant products determined pursuant to this section, less applicable transportation allowances, processing allowances, or other allowances determined pursuant to this subpart.

(3)(i) For any Indian leases which provide that the Secretary may consider the highest price paid or offered for a major portion of production (major portion) in determining value for royalty purposes, if data are available to compute a major portion MMS will, where practicable, compare the values determined in accordance with this section for any lease product with the major portion determined for that lease product. The value to be used in determining value for royalty purposes shall be the higher of those two values unless MMS determines that the value determined in accordance with the other provisions of this section is the highest reasonable royalty value.

(ii) For purposes of this paragraph, major portion means the highest price paid or offered at the time of production for the major portion of gas production from the same field, or for residue gas or gas plant products from the same processing plant, as applicable. The major portion will be calculated using like-quality lease products from the same field or processing plant (or, if necessary to obtain a reasonable sample, from the same area or nearby processing plants) for each month. All such sales will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent (by volume) plus 1 mcf of the gas (starting from the bottom) is sold, or for gas plant products, 50 percent (by volume) plus 1 unit.

(b)(1) The value of the residue gas or any gas plant product which is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee. The value that the lessee reports for royalty purposes is subject to monitoring, review, and audit. In conducting these reviews and audits, MMS will determine whether the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the residue gas or gas plant product, or whether there may be factors which would cause the contract not to be deemed arm's-length. The MMS may direct a lessee to pay royalty upon a different value if it determines that the lessee's reported value is inconsistent with the requirements of these regulations.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, the value of residue gas sold pursuant to a warranty contract shall be determined by MMS, and due consideration will be given to all valuation criteria specified in this section. The lessee must request a value determination in accordance with paragraph (g) of this section for gas sold pursuant to a warranty contract; *Provided, however,* that any value determination for a warranty contract in effect on the effective date of these regulations shall remain in effect until modified by MMS.

(3) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer for the residue gas or gas plant product.

(c) The value of residue gas or any gas plant product which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following paragraphs:

(1) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the lessee's (including any affiliates of the lessee) gross proceeds derived from, or paid under, comparable arm's-length contracts for purchases, sales, or other dispositions of like-quality residue gas or gas plant products from the same processing plant. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: Price, time of execution, duration, market or markets served, terms, quality of residue gas or gas plant products, volume, and such other factors as may

be appropriate to reflect the value of the residue gas or gas plant products;

(2) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the gross proceeds under comparable arm's-length contracts between other persons for purchases, sales, or other dispositions of like-quality residue gas or gas plant products from the same processing plant. Comparability shall be determined using the same criteria as specified in paragraph (c)(1) of this section;

(3) A value determined by consideration of other information relevant in valuing like-quality residue gas or gas plant products, including gross proceeds under arm's-length contracts for like-quality residue gas or gas plant products from other nearby processing plants, posted prices for residue gas or gas plant products, prices received in spot sales of residue gas or gas plant products, other reliable public sources of price or market information, and other information as to the particular lease operation or the saleability of such residue gas or gas plant products; or

(4) A net-back method or any other reasonable method to determine value.

(d) Notwithstanding any other provisions of this section, except paragraph (h) of this section, if the maximum price permitted by Federal law at which any residue gas or gas plant products may be sold is less than the value determined pursuant to this section, then MMS shall accept such maximum price as the value. This limitation shall not apply to residue gas sold pursuant to a warranty contract and valued pursuant to paragraph (b)(2) of this section.

(e)(1) Where the value is determined pursuant to paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines upon review or audit that the reported value is inconsistent with the requirements of these regulations.

(2) Any Federal or Indian lessee will make available upon request to the authorized MMS, State, or Indian representatives, or to the Office of the Inspector General of the Department of the Interior, the General Accounting Office or other persons authorized to receive such information, arm's-length sales and volume data for like-quality residue gas and gas plant products sold, purchased or otherwise obtained by the lessee from the same processing plant or from nearby processing plants.

(3) A lessee shall notify MMS if it has determined any value pursuant to paragraph (c) (3) or (4) of this section. The notification shall be by letter to the MMS Associate Director for Royalty Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this section is a one-time notification due no later than the month the lessee first reports royalties on a Form MMS–2014 using a valuation method authorized by paragraph (c) (3) or (4) of this section, and each time there is a change in a method under paragraph (c) (3) or (4) of this section.

(f) If MMS determines that a lessee has not properly determined value, the lessee shall pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also pay interest computed pursuant to § 218.54 of this title. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(g) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method, and may use that method in determining value for royalty purposes until MMS issues its decision. The lessee shall submit all available data relevant to its proposal. The MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (f) of this section.

(h) Notwithstanding any other provision of this section, under no circumstances shall the value for royalty purposes be less than the gross proceeds accruing to the lessee for residue gas and/or any gas plant products, less applicable transportation allowances, processing allowances, or other allowances determined pursuant to this subpart.

(i)(1) The lessee is required to place residue gas and gas plant products in marketable condition at no cost to the Federal Government or Indian lessor unless otherwise provided in the lease agreement or this section. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the residue gas or gas plant products in marketable condition.

(2) If the lessee incurs extraordinary costs prior to processing for the gathering, compression, dehydration, or sweetening of gas production subject to this section from frontier or deep-water areas, or from a gas production operation recognized by MMS as unique, and those costs relate to unusual or unconventional operations, it may apply to MMS for an allowance. Such an allowance may be granted only if:

(i) The costs are associated with leases located north of the Arctic Circle, the costs are associated with OCS leases located in water depths in excess of 400 meters, or the costs are associated with a unique gas production operation which MMS approves as eligible for the provisions of this paragraph; and

(ii) The lessee can demonstrate that the costs are, by reference to standard industry conditions and practice, extraordinary, unusual, or unconventional.

(3) The MMS shall determine the amount of the extraordinary cost allowance which shall remain in effect for the period specified in the approval, not to exceed 1 year. To retain the authority to deduct the allowance, the lessee must report the deduction to MMS at the end of the approval period, and annually thereafter, in a form and manner prescribed by MMS. MMS annually shall reconsider whether a unique gas production operation will continue to be eligible for an extraordinary cost allowance determined in accordance with this paragraph. Extraordinary cost allowance deductions are subject to monitoring, review, audit, and adjustment.

(j) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will

owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part, or timely, for a quantity of residue gas or gas plant product.

(k) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by MMS of value under this section shall be considered final or binding against the Federal Government, its beneficiaries, the Indian Tribes, or allottees, until the audit period is formally closed.

(l) Certain information submitted to MMS to support valuation proposals, including transportation allowances, processing allowances or extraordinary cost allowances, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt, may be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this Part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, Title 43 CFR Part 2. Nothing in this section is intended to limit or diminish in any manner whatsoever the right of an Indian lessor to obtain any and all information as such lessor may be lawfully entitled from the MMS or such lessor's lessee directly under the terms of the lease, 30 U.S.C. 1733, or other applicable law.

§ 206.154 Determination of quantities and qualities for computing royalties.

(a)(1) Royalties shall be computed on the basis of the quantity and quality of unprocessed gas at the point of royalty settlement approved by BLM or MMS for onshore and OCS leases, respectively.

(2) If the value of gas determined pursuant to § 206.152 of this part is based upon a quantity and/or quality that is different from the quantity and/or quality at the point of royalty settlement, as approved by BLM or MMS, that value shall be adjusted for the differences in quantity and/or quality.

(b)(1) For residue gas and gas plant products, the quantity basis for computing royalties due is the monthly net output of the plant even though residue gas and/or gas plant products may be in temporary storage.

(2) If the value of residue gas and/or gas plant products determined pursuant to § 206.153 of this part is based upon a quantity and/or quality of residue gas and/or gas plant products that is different from that which is attributable to a lease, determined in accordance with paragraph (c) of this section, that value shall be adjusted for the differences in quantity and/or quality.

(c) The quantity of the residue gas and gas plant products attributable to a lease shall be determined according to the following procedure:

(1) When the net output of the processing plant is derived from gas obtained from only one lease, the quantity of the residue gas and gas plant products on which computations of royalty are based is the net output of the plant.

(2) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of uniform content, the quantity of the residue gas and gas plant products allocable to each lease shall be in the same proportions as the ratios obtained by dividing the amount of gas delivered to the plant from each lease by the total amount of gas delivered from all leases.

(3) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of nonuniform content, the quantity of the residue gas allocable to each lease will be determined by multiplying the amount of gas delivered to the plant from the lease by the residue gas content of the gas, and dividing the arithmetical product thus obtained by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant, and then multiplying the net output of the residue gas by the arithmetic quotient obtained. The net output of gas plant products allocable to each lease will be determined by multiplying the amount of gas delivered to the plant from the lease by the gas plant product content of the gas, and dividing the arithmetical product thus obtained by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant, and then multiplying the net output of each gas plant product by the arithmetic quotient obtained.

(4) A lessee may request MMS approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease. If approved, such method will be applicable to all gas production from Federal and Indian leases that is processed in the same plant.

(d)(1) No deductions may be made from the royalty volume or royalty value for actual or theoretical losses. Any actual loss of unprocessed gas that may be sustained prior to the royalty settlement metering or measurement point will not be subject to royalty provided that such loss is determined to have been unavoidable by BLM or MMS, as appropriate.

(2) Except as provided in paragraph (d)(1) of this section and § 206.151(c) of this part, royalties are due on 100 percent of the volume determined in accordance with paragraphs (a) through (c) of this section. There can be no reduction in that determined volume for actual losses after the quantity basis has been determined or for theoretical losses that are claimed to have taken place. Royalties are due on 100 percent of the value of the unprocessed gas, residue gas, and/or gas plant products as provided in this Part, less applicable allowances. There can be no deduction from the value of the unprocessed gas, residue gas, and/or gas plant products to compensate for actual losses after the quantity basis has been determined, or for theoretical losses that are claimed to have taken place.

§ 206.155 Accounting for comparison.

(a) Except as provided in paragraph (b) of this section, where the lessee (or a person to whom the lessee has transferred gas pursuant to a non-arm's-length contract or without a contract) processes the lessee's gas and after processing the gas the residue gas is not sold pursuant to an arm's-length contract, the value, for royalty purposes, shall be the greater of:

(1) The combined value, for royalty purposes, of the residue gas and gas plant products resulting from processing the gas determined pursuant to § 206.153 of this part, plus the value, for royalty purposes, of any condensate recovered downstream of the point of royalty settlement without resorting to processing determined pursuant to § 206.102 of this part; or

(2) The value, for royalty purposes, of the gas prior to processing determined in accordance with § 206.152 of this part.

(b) The requirement for accounting for comparison contained in the terms of leases, particularly Indian leases, will govern as provided in § 206.150(b). When accounting for comparison is required by the lease terms, such accounting for comparison shall be determined in accordance with paragraph (a) of this section.

§ 206.156 Transportation allowances—general.

(a) Where the value of gas has been determined pursuant to § 206.152 or § 206.153 of this part at a point (e.g., sales point or point of value determination) off the lease, MMS shall allow a deduction for the reasonable actual costs incurred by the lessee to transport unprocessed gas, residue gas, and gas plant products from a lease to a point off the lease including, if appropriate, transportation from the lease to a gas processing plant off the lease and from the plant to a point away from the plant.

(b) Transportation costs must be allocated individually among products produced and transported. However, no transportation deduction shall be allowed for products that are not royalty bearing.

(c)(1) Except as provided in paragraph (c)(3) of this section, for unprocessed gas valued in accordance with § 206.152 of this part, the transportation allowance deduction on the basis of a selling arrangement shall not exceed 50 percent of the value of the unprocessed gas determined in accordance with § 206.152 of this part.

(2) Except as provided in paragraph (c)(3) of this section, for gas production valued in accordance with § 206.153 of this part the transportation allowance deduction on the basis of a selling arrangement shall not exceed 50 percent (100 percent for sulfur) of the value of the residue gas or gas plant product determined in accordance with § 206.153 of this part. For purposes of this section, natural gas liquids shall be considered one product.

(3) Upon request of a lessee, MMS may approve a transportation allowance deduction in excess of the limitations prescribed by paragraphs (c)(1) and (c)(2) of this section, except for sulfur. The lessee must demonstrate that the transportation costs incurred in excess of the limitations prescribed in paragraphs (c)(1) and (c)(2) of this section were reasonable, actual, and necessary. An application for exception shall contain all relevant and supporting documentation necessary for the MMS to make a determination. Except for sulfur, under no circumstances shall the value for royalty purposes under any selling arrangement be reduced to zero.

(d) If, after a review and/or audit, MMS determines that a lessee has improperly determined a transportation allowance authorized by this subpart, then the lessee shall pay any additional royalties, plus interest, determined in accordance with § 218.54 of this title, or shall be entitled to a credit, without interest.

§ 206.157 Determination of transportation allowances.

(a) *Arm's-length transportation contracts.* (1) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting the unprocessed gas, residue gas and/or gas plant products under that contract, subject to monitoring, review, audit, and adjustment. Such allowances shall be subject to the provisions of paragraph (f) of this section. Before any deduction may be taken, the lessee must submit a completed page one of Form MMS-4295, Gas Transportation Allowance Report, in accordance with paragraph (c)(1) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS-4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

(2) If an arm's-length transportation contract includes more than one product in a gaseous phase and the transportation costs attributable to each product cannot be determined from the contract, the total transportation costs shall be allocated in a consistent and equitable manner to each of the products transported in the same proportion as the ratio of the volume of each product (including water vapor) to the volume of all products in the gaseous phase. No allowance may be taken for the costs of transporting lease production which is not royalty bearing.

(3) If an arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. The lessee may use the transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all relevant data to support its proposal. The initial proposal must be submitted by [*insert the last day of the month which is 3 months after the last day of the month of the effective date of these regulations*] or within 3 months after the last day of the month for which the lessee requests a transportation allowance, whichever is later (unless MMS approves a longer period). The MMS shall then determine the gas transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary. No allowance may be taken for the costs of transporting lease production which is not royalty bearing.

(4) Where the lessee's payments for transportation under an arm's-length contract are not based on a dollar per unit, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(5) Where an arm's-length sales contract price or a posted price includes a provision whereby the listed price is reduced by a transportation factor, MMS will not consider the transportation factor to be a transportation allowance. The transportation factor may be used in determining the lessee's gross proceeds for the sale of the product.

(b) *Non-arm's-length or no contract.* (1) If a lessee has a non-arm's-length transportation contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable actual costs as provided in this paragraph. All transportation allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and adjustment. Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS-4295 in accordance with paragraph (c)(2) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS-4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. The MMS will monitor the allowance deductions to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual transportation allowance deduction.

(2) The transportation allowance for non-arm's-length or no-contract situations shall be based upon the lessee's actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial depreciable investment in the transportation system multiplied by the rate of return (determined pursuant to paragraph (b)(2)(v) of this section) in accordance with paragraph (b)(v) of this section. Allowable capital costs are generally those costs for depreciable fixed assets

(including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) A lessee may use either depreciation (paragraph (b)(2)(iv)(A) of this section) or a return on depreciable capital investment (paragraph (b)(2)(iv)(B) of this section). Once a lessee has elected to use either of the paragraphs for a transportation system, the lessee may not later elect to change to the other alternative without approval of the MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the transportation system services, or a unit of production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership, a transportation system shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) The MMS shall allow as a cost an amount equal to the allowable initial capital investment in the transportation system multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to transportation facilities first placed in service after [*insert the effective date of these regulations*].

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average rate as published in *Standard and Poor's Bond Guide* for the first month of the reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent transportation allowance reporting period (which is determined pursuant to paragraph (c)(2) of this section).

(3) The deduction for transportation costs shall be determined on the basis of the lessee's cost of transporting each product through each individual transportation system. Where more than one product in a gaseous phase is transported, the allocation of costs to each of the products transported shall be made in a consistent and equitable manner in the same proportion as the ratio of the volume of each product (including water vapor) to the volume of all products in the gaseous phase. The lessee may not take an allowance for transporting a product which is not royalty bearing.

(4) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to MMS. The lessee may use the transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all relevant data to support its proposal. The initial proposal must be submitted by [*insert the last day of the month which is 3 months after the last day of the month of the effective date of these regulations*] or within 3 months after the last day of the month for which the lessee requests a transportation allowance, whichever is later, unless MMS approves a longer period. The MMS shall then determine the transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary. The lessee may not take an allowance for transporting a product which is not royalty bearing.

(5) A lessee may apply to the MMS for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(4) of this section. The MMS may grant the exception only if:

(i) The lessee has arm's-length contracts for transportation of other production through the same transportation system;

(ii) The lessee has a tariff for the transportation system approved by the Federal Energy Regulatory Commission; and

(iii) The persons purchasing transportation services from the lessee had a reasonable alternative to using the lessee's transportation system.

If the MMS grants the exception, the lessee shall use as its transportation allowance the volume-weighted average prices charged other persons pursuant to arm's-length contracts for transportation through the same transportation system.

(c)(1) *Reporting requirements—arm's-length contracts.* (i) With the exception of those transportation allowances specified in paragraph (c)(1)(v) of this section, the lessee shall submit page one of the initial Form MMS-4295 prior to, or at the same time as, the transportation allowance determined pursuant to an arm's-length contract is reported on Form MMS-2014, Report of Sales and Royalty Remittance.

(ii) The initial Form MMS-4295 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS-4295 within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period. Lessees may request special reporting procedures in unique allowance reporting situations, such as those related to spot sales.

(iv) The MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Transportation allowances which are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate.

(2) *Non-arm's-length or no contract.* (i) With the exception of those transportation allowances specified in paragraph (c)(2)(v) of this section, the lessee shall submit an initial Form MMS-4295 prior to, or at the same time as, the transportation allowance determined pursuant to a non-arm's-length contract or no- contract situation is reported on Form MMS-2014, Report of Sales and Royalty Remittance. The initial report may be based upon estimated costs.

(ii) The initial Form MMS–4295 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the transportation under the non-arm's-length contract or the no contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4295 containing the actual costs for the previous reporting period. If the transportation is continuing, the lessee shall include on Form MMS–4295 its estimated costs for the next calendar year. The estimated transportation allowance shall be based on the actual costs for the previous reporting period plus or minus any adjustments which are based on the lessee's knowledge of decreases or increases which will affect the allowance. Form MMS–4295 must be received by MMS within 3 months after the end of the previous reporting period, unless MMS approves a longer period.

(iv) For new transportation facilities or arrangements, the lessee's initial Form MMS–4295 shall include estimates of the allowable transportation costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the transportation system, or if such data are not available, the lessee shall use estimates based upon industry data for similar transportation systems.

(v) Non-arm's-length contract or no contract based transportation allowances which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate.

(vi) Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4295. The data shall be provided within a reasonable period of time, as determined by MMS.

(3) The MMS may establish reporting dates for individual lessees different than those specified in this subpart in order to provide more effective administration. Lessees will be notified of any change in their reporting period.

(4) Transportation allowances must be reported as a separate line item on Form MMS–2014, unless MMS approves a different reporting procedure.

(d) *Interest assessments for incorrect or late reports and failure to report.* (1) If a lessee deducts a transportation allowance on its Form MMS–2014 without complying with the requirements of this section, the lessee shall pay interest only on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with § 218.54 of this chapter.

(e) *Adjustments.* (1) If the actual transportation allowance is less than the amount the lessee has estimated and taken during the reporting period, the lessee shall be required to pay additional royalties due, plus interest computed pursuant to § 218.54 of this chapter, retroactive to the first month the lessee is authorized to deduct a transportation allowance. If the actual transportation allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to a credit without interest.

(2) For lessees transporting production from onshore Federal and Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

(3) For lessees transporting gas production from leases on the OCS, if the lessee's estimated transportation allowance exceeds the allowance based on actual costs, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with its payment, in accordance with instructions provided by MMS. If the lessee's estimated transportation allowances is less than the allowance based on actual costs, the refund procedure will be specified by MMS.

(f) Notwithstanding any other provisions of this subpart, for other than arm's-length contracts no cost shall be allowed for transportation which results from payments (either volumetric or for value) for actual or theoretical losses.

(g) *Other transportation cost determinations.* The provisions of this section shall apply to determine transportation costs when establishing value using a net-back valuation procedure or any other procedure that requires deduction of transportation costs.

§ 206.158 Processing allowance—general.

(a) Where the value of gas is determined pursuant to § 206.153 of this part, a deduction shall be allowed for the reasonable actual costs of processing.

(b) Processing costs must be allocated among the gas plant products. A separate processing allowance must be determined for each gas plant product and processing plant relationship. Natural gas liquids (NGL's) shall be considered as one product.

(c)(1) Except as provided in paragraph (d)(2) of this section, the processing allowance shall not be applied against the value of the residue gas. Where there is no residue gas, the lessee shall propose, for MMS approval, an appropriate gas plant product against which no allowance may be applied.

(2) Except as provided in paragraph (c)(3) of this section, the processing allowance deduction on the basis of an individual product shall not exceed 66⅔ percent (100 percent for sulfur) of the value of each gas plant product determined in accordance with § 206.153 of this part (such value to be reduced first for any transportation allowances related to post-processing transportation authorized by § 206.156 of this part and any extraordinary cost allowances authorized by § 206.153(i) of this part).

(3) Upon request of a lessee, MMS may approve a processing allowance in excess of the limitation prescribed by paragraph (c)(2) of this section, except for sulfur. The lessee must demonstrate that the processing costs incurred in excess of the limitation prescribed in paragraph (c)(2) of this section were reasonable, actual, and necessary. An application for exception shall contain all relevant and supporting documentation for MMS to make a determination. Except for sulfur, under no circumstances shall the value for royalty purposes of any gas plant product be reduced to zero.

(d)(1) Except as provided in paragraph (d)(2) of this section, no processing cost deduction shall be allowed for the costs of placing lease products in marketable condition, including dehydration, separation, compression, or storage, even if those functions are performed off the lease or at a processing plant. Where gas is processed for the removal of acid gases, commonly referred to as "sweetening," no processing cost deduction shall be allowed for such costs unless the acid gases removed are further processed into a gas plant product. In such event, the lessee shall be eligible for a processing allowance as determined in accordance with this subpart. However, MMS will not grant any processing allowance for processing lease production which is not royalty bearing.

(2) (i) If the lessee incurs extraordinary costs for processing gas production from a unique gas production

operation, it may apply to MMS for an allowance for those costs which shall be in addition to any other processing allowance to which the lessee is entitled pursuant to this section. Such an allowance may be granted only if the lessee can demonstrate that the costs are, by reference to standard industry conditions and practice, extraordinary, unusual, or unconventional.

(ii) Prior MMS approval to continue an extraordinary processing cost allowance is not required. However, to retain the authority to deduct the allowance the lessee must report the deduction annually to MMS in a form and manner prescribed by MMS. MMS annually shall reconsider whether an extraordinary processing cost allowance will continue to be authorized.

(e) If MMS determines that a lessee has improperly determined a processing allowance authorized by this subpart, then the lessee shall pay any additional royalties, plus interest determined in accordance with § 218.54 of this chapter, or shall be entitled to a credit, without interest.

§ 206.159 Determination of processing allowances.

(a) *Arm's-length processing contracts.* (1) For processing costs incurred by a lessee pursuant to an arm's-length contract, the processing allowance shall be the reasonable actual costs incurred by the lessee for processing the gas under that contract, subject to monitoring, review, audit, and adjustment. Before any deduction may be taken, the lessee must submit a completed page one of Form MMS-4109, Gas Processing Allowance Summary Report, in accordance with paragraph (c)(1) of this section. A processing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS-4109 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

(2) If an arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product can be determined from the contract, then the processing costs for each gas plant product shall be determined in accordance with the contract. No allowance may be taken for the costs of processing lease production which is not royalty bearing.

(3) If an arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. The lessee may use its proposed allocation procedure until MMS issues its determination. The lessee shall submit all relevant data to support its proposal. The initial proposal must be submitted by *[insert the last day of the month which is 3 months after the last day of the month of the effective date of these regulations]* or within 3 months after the last day of the month for which the lessee requests a processing allowance, whichever is later (unless MMS approves a longer period). The MMS shall then determine the processing allowance based upon the lessee's proposal and any additional information MMS deems necessary. No processing allowance will be granted for the costs of processing lease production which is not royalty bearing.

(4) Where the lessee s payments for processing under an arm's-length contract are not based on a dollar per unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(b) *Non-arm's-length or no contract.* (1) If a lessee has a non-arm's-length processing contract or has no contract, including those situations where the lessee performs processing for itself, the processing allowance will be based upon the lessee s reasonable actual costs as provided in this paragraph. All processing allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and adjustment. Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS-4109 in accordance with paragraph (c)(2) of this section. A processing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS-4109 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. The MMS will monitor the allowance deduction to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual processing allowance.

(2) The processing allowance for non-arm's-length or no-contract situations shall be based upon the lessee's actual costs for processing during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial depreciable investment in the processing plant multiplied by the rate of return (determined pursuant to paragraph (b)(2)(v) of this section) in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the processing plant.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the processing plant; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the processing plant is an allowable expense. State and Federal income taxes and severance taxes, including royalties, are not allowable expenses.

(iv) A lessee may use either depreciation (paragraph (b)(2)(iv)(A)of this section) or a return on depreciable capital investment (paragraph (b)(2)(iv)(B) of this section). When a lessee has elected to use either of these paragraphs for a processing plant, the lessee may not later elect to change to the other alternative without approval of the MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the processing plant services, or a unit-of-production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a processing plant shall not alter the depreciation schedule established by the original processor/lessee for purposes of the allowance calculation. With or without a change in ownership, a processing plant shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) The MMS shall allow as a cost an amount equal to the allowable initial capital investment in the processing plant multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to plants first placed in service after [*insert the effective date of these regulations*].

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average rate as published in *Standard and Poor's Bond Guide* for the first month of the reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent processing allowance reporting period (which is determined pursuant to paragraph (c)(2) of this section).

(3) The processing allowance for each gas plant product shall be determined based on the lessee's reasonable and actual cost of processing the gas. Allocation of costs to each gas plant product shall be based upon generally accepted accounting principles. The lessee may not take an allowance for the costs of processing lease production which is not royalty bearing.

(4) A lessee may apply to MMS for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(3) of this section. The MMS may grant the exception only if:

(i) The lessee has arm's-length contracts for processing other gas production at the same processing plant;

(ii) At least 50 percent of the gas processed annually at the plant is processed pursuant to arm's-length processing contracts;

(iii) The persons purchasing processing services from the lessee had a reasonable alternative to using the lessee's processing plant. If the MMS grants the exception, the lessee shall use as it processing allowance the volume weighted average prices charged other persons pursuant to arm's-length contracts for processing at the same plant.

(c) *Reporting requirements.*—(1) *Arm's-length contracts.* (i) With the exception of those processing allowances specified in paragraph (c)(1)(v) of this section, the lessee shall submit page one of the initial Form MMS–4109 prior to, or at the same time as, the processing allowance determined pursuant to an arm's-length contract is reported on Form MMS–2014, Report of Sales and Royalty Remittance.

(ii) The initial Form MMS–4109 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a processing allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4109 within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period.

(iv) The MMS may require that a lessee submit arm's-length processing contracts and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Processing allowances which are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate.

(2) *Non-arm's-length or no contract.* (i) With the exception of those processing allowances specified in paragraph (c)(2)(v) of this section, the lessee shall submit an initial Form MMS–4109 prior to, or at the same time as, the processing allowance determined pursuant to a non-arm's-length contract or no contract situation is reported on Form MMS–2014, Report of Sales and Royalty Remittance. The initial report may be based upon estimated costs.

(ii) The initial Form MMS–4109 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a processing allowance and shall continue until the end of the calendar year, or until the processing under the non-arm's-length contract or the no-contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4109 containing the actual costs for the previous reporting period. If gas processing is continuing, the lessee shall include on Form MMS–4109 its estimated costs for the next calendar year. The estimated gas processing allowance shall be based on the actual costs for the previous period plus or minus any adjustments which are based on the lessee's knowledge of decreases or increases which will affect the allowance. Form MMS–4109 must be received by MMS within 3 months after the end of the previous reporting period, unless MMS approves a longer period.

(iv) For new processing plants, the lessee's initial Form MMS–4109 shall include estimates of the allowable gas processing costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the plant, or if such data are not available, the lessee shall use estimates based upon industry data for similar gas processing plants.

(v) Processing allowances based on non-arm's-length or no-contract situations which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate for gas production from onshore Federal and Indian leases. For gas production from OCS leases such allowances will be allowed to continue until they terminate or until the end of the calendar year, whichever is earlier.

(vi) Upon request by MMS, the lessee shall submit all data used by the lessee to prepare its Form MMS–4109. The data shall be provided within a reasonable period of time, as determined by MMS.

(3) The MMS may establish reporting dates for individual leases different from those specified in this subpart in order to provide more effective administration: Lessees will be notified of any change in their reporting period.

(4) Processing allowances must be reported as a separate line on the Form MMS–2014, unless MMS approves a different reporting procedure.

(d) Interest assessments for incorrect or late reports and failure to report. (1) If a lessee deducts a processing allowance on its Form MMS–2014 without complying with the requirements of this section, the lessee shall pay interest only on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a processing allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with § 218.54 of this chapter.

(e) Adjustments. (1) If the actual gas processing allowance is less than the amount the lessee has estimated and taken during the reporting period, the lessee shall be required to pay additional royalties due-plus interest computed pursuant to § 218.54 of this chapter, retroactive to the first day of the first month the lessee is authorized to deduct a processing allowance. If the actual processing allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to a credit without interest.

(2) For lessees processing production from onshore Federal and Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

(3) For lessees processing gas production from leases on the OCS, if the lessee's estimated processing allowance exceeds the allowance based on actual costs, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with its payment, in accordance with instructions provided by MMS. If the lessee's estimated costs were less than the actual costs, the refund procedure will be specified by MMS.

(f) Other processing cost determinations. The provisions of this section shall apply to determine processing costs when establishing value using a net back valuation procedure or any other procedure that requires deduction of processing costs.

[FR Doc. 87–18529 Filed 8–14–87; 8:45 am]

BILLING CODE 4310-MR-M

Monday
August 17, 1987

Part III

Department of the Interior

Minerals Management Service

30 CFR Parts 202, 203, 206, 207, 210, and 241

43 CFR Part 3160

Revision of Oil Product Valuation Regulations and Related Topics; Further Notice of Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

30 CFR Parts 202, 203, 206, 207, 210, and 241

43 CFR Part 3160

Revision of Oil Product Valuation Regulations and Related Topics

AGENCY: Minerals Management Service, Interior.

ACTION: Further notice of proposed rulemaking.

SUMMARY: Proposed valuation regulations for oil were published for comment in the **Federal Register** on January 15, 1987 (52 FR 1858). Public hearings were held in Denver, Colorado, on March 4, 1987, and in New Orleans, Louisiana, on March 17, 1987. Over 100 written comments were received on this proposed rulemaking.

Because of the extensive and diverse interest raised by this and related rulemakings for valuation of gas and coal, MMS established a procedure whereby it would publish draft final regulations and provide an abbreviated public comment period to obtain further public comment before the rules are issued as final regulations on September 30, 1987. The Congress is aware of and understands this process. See Conference Report on H.R. 1827 in the Congressional Record dated June 27, 1987, at pages H5661–H5666.

Accordingly, attached to this notice as an appendix is a draft of the oil valuation regulations in final form, together with a draft of the preamble for the final rule. The draft contains numerous changes from the proposed oil valuation regulations in response to the public hearings and the extensive comments received and reviewed by MMS.

DATE: Comments must be received on or before September 2, 1987.

ADDRESS: Written comments may be mailed to Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 628, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231–3432, (FTS) 326–3432.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rulemaking are John L. Price, Scott L. Ellis, Thomas J. Blair, Stanley J. Brown, and William H. Feldmiller, of the Royalty Valuation and Standards Division of the Royalty Management Program, Minerals Management Service (MMS); and Peter J. Schaumberg of the Office of the Solicitor, Washington, DC.

In view of the short public comment period necessitated by MMS's proposed schedule, as understood by Congress, whereby MMS will attempt to issue final rules by September 30, 1987, MMS requests that commenters not simply resubmit comments already provided on the proposed rules. All comments received since publication of the first proposed rulemaking on January 15, 1987, will be included in this rulemaking record. Additional comments should be directed to the provision of the draft final rule in the appendix. Commenters are requested to identify, by section, the provision of the draft final rule to which a comment is directed. Besides specific comments on the draft final rule, MMS also requests commenters to address whether there are additional requirements or approaches which would improve the royalty payment process. The MMS believes it has developed a set of rules which will lead to the proper payment of royalties, but given the interest and concerns raised by this rulemaking, MMS would like to learn of all approaches which will reduce underpayments and minimize any abuse in payment and collection of royalties. MMS would specifically like comments on the ability of auditors to determine compliance with these regulations. MMS also would like commenters to address the extent to which these draft rules are responsive to concerns regarding royalty underpayments identified in the Linowes Commission Report and reports of the Congress, the General Accounting Office and the Department's Office of Inspector General.

MMS recognizes that arm's-length contract prices are a principal component of these regulations. Under the draft final rules, the prices under arm's-length contracts would represent value and be the primary values under the benchmarks for non-arm's-length contracts. MMS specifically requests comments on the definition of arm's-length contract and on the use of these contracts to determine value for calculating royalty payments.

The Department of Interior (DOI) has determined that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291. This proposed rulemaking is to consolidate Federal and Indian oil royalty valuation regulations; to clarify DOI oil royalty valuation policy and to clarify DOI oil transportation allowance policy; and to provide for consistent royalty valuation policy among all leasable minerals. Because the proposed rule principally consolidates and streamlines existing regulations for consistent application, there are no significant additional requirements or burdens placed upon small business entities.

Lessee reporting requirements will be approximately $130,000. All oil posted price bulletins or sales contracts will be required to be submitted only upon request, or only in support of a lessee's valuation proposal in unique situations, rather than routinely, as under the existing regulations.

The public is invited to participate in this proceeding by submitting data, views, or arguments with respect to this notice. All comments should be submitted by 4:30 p.m. of the day specified in the **DATE** section to the appropriate address indicated in the **ADDRESS** section of this preamble and should be identified on the outside envelope and on documents submitted with the designation "Revision of Oil Royalty Valuation Regulations and Related Topics." All comments received by the MMS will be available for public inspection in Room C406, Building 85, Denver Federal Center, Lakewood, Colorado, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

Any information or data submitted which is considered to be confidential must be so identified and submitted in writing, one copy only. MMS reserves the right to determine the confidential status of the information or data and to treat it according to its independent determination.

Regulatory Flexibility Act

Because this rule primarily consolidates and streamlines existing regulations for consistent application, there are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this proposed rule. Therefore, the DOI has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Paperwork Reduction Act of 1980

The information collection and

recordkeeping requirements located at §§ 206.105, 207.5, and 210.55 of this rule have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3504(h), and assigned OMB Clearance Number 1010–0061.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Part 202

Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 203

Coal, Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources.

30 CFR Part 206

Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources.

30 CFR Part 207

Government contracts, Mineral royalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 210

Continental shelf, Geothermal energy, Government contracts, mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 241

Administrative practice and procedures, Government contracts, Mineral royalties, Oil and gas exploration, Penalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3160

Government contracts, Indian-lands, Land Management Bureau, Mineral royalties, Oil and gas exploration, Penalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: August 10, 1987.

James E. Cason,

Acting Assistant Secretary, Land and Minerals Management.

Appendix—Draft Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 203, 206, 207, 210, and 241

43 CFR Part 3160

Revision of Oil Product Valuation Regulations and Related Topics

Agency: Minerals Management Service, Interior.

Action: [Draft] Final rule.

Summary: This rulemaking provides for the amendment and clarification of regulations governing valuation of oil for royalty computation purposes. The amended and clarified regulations govern the methods by which value is determined when computing oil royalties and net profit shares under Federal (onshore and Outer Continental Shelf) and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

Effective date: November 1, 1987 (tentative).

For further information contact: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231–3432, (FTS) 326–3432.

Supplementary information: The principal authors of this rulemaking are John L. Price, Scott L. Ellis, Thomas J. Blair, Stanley J. Brown, and William H. Feldmiller, of the Royalty Valuation and Standards Division of the Royalty Management Program, Minerals Management Service (MMS); and Peter J. Schaumberg of the Office of the Solicitor, Washington, DC.

I. Introduction

On January 15, 1987, 52 FR 1858, the Minerals Management Service (MMS) of the Department of the Interior issued a notice of proposed rulemaking to amend the regulations governing the valuation of oil from Federal leases onshore and on the Outer Continental Shelf (OCS), and from Indian Tribal and allotted leases. During the public comment period, MMS received over 100 written comments. In addition, public hearings were held in Lakewood, Colorado, on March 4, 1987, and in New Orleans, Louisiana, on March 17, 1987. Sixteen persons made oral presentations at these hearings.

[Tentative: Because of the complexity of the regulations, and in accordance with MMS's understanding with Congress, MMS issued a further notice of proposed rulemaking which included as an appendix MMS's draft of the final regulations. The purpose of the further notice of proposed rulemaking was to obtain further public comment during a short comment period and then to make any necessary revisions to the final regulations. See Conference Report on H.R. 1827, in the *Congressional Record* dated June 27, 1987, at pages H5651–H5666. A total of______ additional comments were received.]

MMS has considered carefully all of the public comments received during this rulemaking process, which included draft rules and input from the Royalty Management Advisory Committee. A complete account of that process is included in the preamble to the proposed regulations issued in January 1987. Based on its review, MMS hereby adopts final regulations governing the valuation of oil from Federal and Indian leases. These regulations will apply prospectively to production on or after the effective date specified in the *Effective Date* section of this preamble.

II. Purpose and Background

The MMS is revising the current regulations regarding the valuation of oil to accomplish the following:

1. Clarification and reorganization of the existing regulations at 30 CFR Parts 202, 203, 206, 207, 210, 241, and 43 CFR Part 3160.
2. Creation of regulations consistent with the present organizational structure of the Department of the Interior (DOI).
3. Placement of the oil royalty valuation regulations in a format compatible with the valuation regulations for all leasable minerals.
4. Clarification that royalty is to be paid on all consideration received by lessees, less applicable allowances, for lease production.
5. Creation of regulations to guide the lessee in the determination of allowable transportation costs for oil to aid in the calculation of proper royalty due the lessor.

Structurally, these regulations include the reorganization and redesignation of Parts 202, 203, 206, 207, and 210. Each part is reorganized by redesignating "Subpart B—Oil and Gas, General" as "Subpart B—Oil, Gas, and OCS Sulfur, General"; "Subpart C—Oil and Gas, Onshore" as "Subpart C—Federal and Indian Oil"; and "Subpart D—Oil, Gas, and Sulfur, Offshore" as "Subpart D—Federal and Indian Gas."

Also, a number of sections are renumbered and/or moved to a new subpart. In addition, §§ 202.51, 202.102, 206.103, 206.104, 207.1, 207.2, 207.5, and 210.55 are added to the appropriate subparts.

Current § 206.104, proposed as § 202.101, is an onshore operational regulation which is under the jurisdiction of the Bureau of Land Management (BLM). This section is being redesignated as 43 CFR § 3162.7–4, and the existing § 3162.7–4 is being redesignated as § 3162.7–5.

This rule applies prospectively to production on or after the effective date specified in the *Effective Date* section of this preamble. It supersedes all existing oil royalty valuation directives contained in numerous Secretarial, Minerals Management Service, and U.S. Geological Survey Conservation Division (now Bureau of Land Management, Onshore Operations) orders, directives, regulations and Notice to Lessees (NTL's) issued over past years. Specific guidelines governing reporting requirements consistent with these new oil valuation regulations will be incorporated into the MMS Payor Handbook.

For the convenience of oil and gas lessees, payors, and the public, the following chart summarizes the effects of these rules.

Regulation changes	Descriptions
I. REDESIGNATIONS:	
1. Subparts E, F, and G of Part 241 are redesignated as Subparts F, G, and H, respectively.	This administrative action permits the insertion of a new Subpart E—"Solid Minerals, General" in this Part.
2. Sections 202.150, 202.151, and 202.152 are redesignated as §§ 202.100, 202.53, and 202.52, respectively. Section 203.150 is redesignated as § 203.50.	This administrative action more appropriately locates within 30 CFR the information contained in these sections.
Section 206.104 is redesignated under Title 43 CFR as § 3162.7–4. Existing § 3162.7–4 is redesignated as § 3162.7–5.	This section addresses a BLM onshore operations issue which properly belongs in 43 CFR.
3. Sections 210.300 and 210.301 are redesignated as §§ 210.350 and 210.351, respectively.	This action corresponds to the redesignation of Subpart G as Subpart H (see Item 1. above).
4. Section 241.100 is redesignated as § 241.60	This action is the result of retitling of the subparts.
II. DELETIONS:	
1. Subpart H—"Indian Lands" is removed from Part 241	Oil royalty valuation for Indian Lands is now covered by Subpart C—Federal and Indian Oil.
2. Sections 202.100 through 202.103 are removed from Subpart B of Part 202.	These sections cover activities now governed by BLM.
3. Section 203.100 is removed from Subpart C	This section covers an activity now governed by BLM operations personnel.
4. Section 206.103 is removed from Subpart C of Part 206	This section has been rewritten and relocated in the regulations as Subparts C and D of Part 206.
5. Sections 207.1, 207.2, 207.5, 207.6 and 207.7 are removed from Subpart A of Part 207.	The subject matter of these Sections is addressed elsewhere in the regulations. They are, therefore, redundant and have been removed to avoid confusion.
6. Sections 210.100 through 210.105, §§ 210.150 and 210.151 are removed from Subpart C and D, respectively, of Part 210.	These requirements of §§ 210.100 and 210.101 are now covered by Part 207, as amended. Sections 210.102, 210.103 and 210.104 are no longer applicable (these forms are no longer in use). § 210.105 has been replaced by new § 210.55.
7. Section 241.100 is redesignated as § 241.60. Paragraph 241.60(c) is removed from Subpart C of Part 241.	Newly redesignated § 241.60(c)(1) is no longer applicable (this form is no longer in use).
III ADDITIONS:	
1. The following subparts are added to Part 207:	
Subpart A—General Provisions	Separate subparts have been added to Part 207 to make it consistent with other parts of 30 CFR Chapter II and to provide both structure and space for future expansion of this portion of the regulations.
Subpart B—Oil, Gas and OCS Sulfur, General [Reserved]	
Subpart C—Federal and Indian Oil [Reserved]	
Subpart D—Federal and Indian Gas [Reserved]	
Subpart E—Solid Minerals, General [Reserved]	
Subpart F—Coal [Reserved]	
Subpart G—Other Solid Minerals [Reserved]	
Subpart H—Geothermal Resources [Reserved]	
Subpart I—OCS Sulfur [Reserved]	
2. The following subparts are added to Part 210:	
Subpart H—Geothermal Resources [Reserved]	These new subparts provide space for regulations of general applicability to geothermal resources and OCS sulfur.
Subpart I—OCS Sulfur [Reserved]	
3. The following subparts are added to Part 241:	
Subpart E—Solid Minerals, General [Reserved]	These new subparts provide space for future regulations of general applicability to solid minerals and OCS sulfur.
Subpart I—OCS Sulfur [Reserved]	
4. Sections 202.51 and 202.101 are added to Part 202. Sections 206.103 and 206.104 are added to Part 206.	These new sections provide oil valuation standards and procedures.
5. Sections 207.1, 207.2, and 207.5 are added to Part 207	These new sections reference the definitions in Part 206 and set forth certain recordkeeping requirements.
6. Section 210.55 is added to Part 210	This will replace § 210.105.
IV. AMENDMENTS:	
1. Parts 202, 203, 206, 210, and 241 are amended by retitling the following Subparts:	
Subpart B retitled "Oil, Gas, and OCS Sulfur, General	These subparts have been retitled in order to organize them by a commodity (oil vs. gas, etc.) rather than emphasizing location (onshore vs. offshore) as was done formerly.
Subpart C retitled "Federal and Indian Oil [Reserved]"	
Subpart D retitled "Federal and Indian Gas [Reserved]"	

The rules in § 206.100 expressly recognize that where the provisions of any Indian lease, or any statute or treaty affecting Indian leases, are inconsistent with the regulations, then the lease, statute, or treaty will govern to the extent of the inconsistency. The same principle applies to Federal leases.

A separate oil definitions section applicable to the royalty valuation of oil is included in this rulemaking in Part 206. All definitions contained under each subpart of Part 206 will be applicable to the regulations contained in Parts 202, 203, 207, 210, and 241. Because the definitions are specific to these parts, they may not necessarily conform to definitions of the same terms in other Federal agencies' regulations.

III. Response to General Comments Received on Proposed Oil Product Valuation Regulations and Related Topics

The notice of proposed oil valuation regulations was published in the **Federal Register** on January 15, 1987 (52 FR 1858). The public comment period on the proposal closed on April 15, 1987. Over one hundred commenters provided extensive comments which were received and considered in preparing this notice.

Of the 57 commenters filing comments on valuation issues, 30 commenters represented industry/trade groups; 15 represented State, local, and Federal governmental entities; 10 represented Indian Tribes or allottees; 1 commenter was a State/Tribal association and 1 commenter was an individual. Of the 46 commenters filing comments on transportation issues, 24 commenters represented industry/trade groups; 8 represented State, local, and Federal governmental entities; 11 represented Indian Tribes or allottees; 1 commenter was a State/Tribal association; and 2 commenters were individuals.

General Comments

The MMS received many diverse comments on the principles underlying the proposed valuation methodology. These comments did not address specific sections of the proposed regulations. The respondents generally comprised two groups, with industry (representing eight respondents) on one side of this issue and States and Indians (representing six respondents each) on opposing sides. The general comments were categorized into five more-or-less interrelated issues: (1) Acceptance of gross proceeds under an arm's-length contract, or the benchmark, as the value for royalty purposes; (2) deduction of transportation costs; (3) legal mandates and responsibilities toward Indians; (4) complexity and obscurity of regulations and definitions; and (5) economic impacts.

(1) Acceptance of Gross Proceeds as the Value for Royalty Purposes

Industry commenters generally agreed that the basic premise underlying the proposed rulemaking is sound because value is best determined by the interaction of competing market forces. However, State and Indian commenters disagreed, particularly objecting to the concept of accepting gross proceeds received under arm's-length transactions as representative of market value. The commenters were concerned that the acceptance of gross proceeds, without additional testing of its validity, could lead to manipulation of pricing schedules, an erosion of payors' accountability and, in general, would fail to protect the interests of the lessor. Many pointed out that gross proceeds has historically not been considered equivalent to market value, citing various legal opinions in support. In this vein, two State and three Indian commenters declared that royalty value should be equivalent to the highest price posted for like-quality production in a field or area.

MMS Response: The MMS's experience demonstrates that the highest price posted in a given field does not necessarily reflect a bona fide offer to purchase, nor does it reflect that significant quantities of oil are being purchased at that price. In these regulations, MMS generally will assess royalty on the value to which the lessee is legally entitled under its arm's-length contract. MMS maintains that gross proceeds to which a lessee is legally entitled under arm's-length contracts are determined by market forces and thus represent the best measure of market value. For many Indian leases, MMS will also require consideration of the highest price paid for a major portion of production in accordance with the lease terms.

To assure that gross proceeds represent market value, and thus insure accountability, one Indian and two State commenters suggested that reported gross proceeds values should be tested/validated by using the net-back (work-back) procedure as an independent cross-check. They also suggested that royalty reporting should be routinely monitored by using this procedure.

MMS Response: MMS believes that gross proceeds under arm's-length contracts are representative of market value. However, MMS will continue to monitor value determinations under its regulations to ensure that those determinations yield reasonable values. The performance of labor intensive net-back calculations on a routine basis is impractical.

Two State respondents doubted that the benchmark hierarchy system for determining values under non-arm's-length transactions could be properly applied because of the system's complexity and because the valuation procedure is predicated upon a payor's ability and willingness to identify a transaction as either arm's-length or non-arm's-length. They feared that industry might be reluctant to identify non-arm's-length transactions and thus merely declare gross proceeds as value, thereby placing the burden of proper finding upon MMS during audit.

MMS Response: The MMS supports the benchmark system. Most of industry, those who report under the system, believe it to be a workable system. In general, industry can identify its own arm's-length contracts based on standards established in these regulations and it is in its best interests not to classify non-arm's-length transactions as arm's-length because of the threat of both high interest costs and possible penalties. However, MMS will use the audit process to verify that contracts which are claimed to be arm's-length satisfy all the standards of the definition, discussed in detail below.

(2) Deduction of Transportations Costs

Although industry commenters supported the proposed deductions for transportation costs, many of the respondents believed the allowable deductions were too restrictive, and one suggested that transportation allowances should be actual costs based on Federal Energy Regulatory Commission (FERC) tariffs or arm's-length transportation arrangements. However, comments from States (two) and Indians (two) objected to the allowances as being too liberal and unnecessarily open-ended by effectively granting the allowances regardless of need. They suggested that transportation deductions should be allowed only when transportation costs are necessary to the sale of the production, that transportation allowances should be limited to OCS production only, or that no deductions should be allowed, at least for tribal lands.

MMS Response: The MMS believes that costs incurred by a lessee to transport lease production to a delivery point off the lease increases its value and, therefore, is a recognized deduction. See the transportation allowance section of this preamble for further discussion.

(3) Legal Mandates and Responsibilities Toward Indians

Three State and three Indian respondents questioned the legality of the proposed rulemaking, expressing their view that the proposed modifications, particularly with respect to arm's-length contracts and gross proceeds, are contrary to the intent of the valuation requirements of the Mineral Lands Leasing Act, 30 U.S.C. 181 *et seq.*, and the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1701 *et seq.*, and are a marked departure from historical valuation regulations and lease terms. Their basic argument is that the statutes require royalty based on the value of production, and a royalty clause based upon "value" is not satisfied by a valuation procedure based upon gross proceeds; in their opinion, value may be considerably higher than revenues from arm's-length transactions.

MMS Response: The regulations generally define value on the basis of market transactions, consistent with commonly held economic philosophy, rather than some arbitrary "value" which can be easily misconstrued, disputed, or misinterpreted. The MMS believes there is no conflict between the intent of the Mineral Leasing Act, FOGRMA, and the valuation procedures being adopted herein.

The Indian commenters took particular exception to the proposed rulemaking, pointing out that the proposed valuation procedures based on gross proceeds are in conflict with the Secretary's duty under the Unallotted Indian Leasing Act of 1938 and the Indian Mineral Development Act of 1982 to ensure that tribes and allottees receive the maximum return for their property. They disagreed that gross proceeds represented market value, and thus believed they would not receive the maximum benefit accruable from production pursuant to statutes. One respondent suggested that the proposed regulations apply prospectively only to newly issued leases so that royalties owed to Tribes and allottees under existing regulations would not be diminished.

MMS Response: MMS believes the new valuation regulations, with the changes discussed in more detail below, are fully consistent with the Secretary's obligations to Indian lessors.

(4) Complexity and Obscurity of Regulations and Definitions

Some commenters (two State, one Indian, and one Federal bureau) believed the proposed rulemaking generally was excessively complicated, leading to difficulty in interpretation. As a result, they believe the proposed rules fail to achieve the stated goals of simplification and providing certainty.

MMS Response: The MMS has endeavored to correct certain identified deficiencies in the final rulemaking. The regulations combine previous regulations, NTL's, orders, and internal policies. They will provide a single source for product value guidance which necessarily will be simpler and more comprehensive than the existing procedures.

(5) Economic Impacts

One State and four Indian commenters disagreed with MMS's statement that the proposed regulations would yield long-term benefits to royalty owners. Indian commenters in particular believed the proposed valuation rules would have a significant detrimental economic impact on Tribes and allottees. A detailed economic analysis of the economic impacts of the proposed rules was suggested by one commenter to support MMS's claim that the short-term effects on revenues would be limited.

MMS Response: The MMS believes that the regulations provide valuation criteria that will result in reasonable values and will create an atmosphere of certainty in royalty payments and thereby correct some of the royalty deficiencies encountered in the past.

IV. Section-by-section Analysis and Response to Comments

Comments were not received on every section of the proposed regulations. Therefore, if any of those sections were not changed significantly from the proposal, there generally is no further discussion in this preamble. The preamble to the proposed regulation (52 FR 1858, January 15, 1987) may be consulted for a full description of the purpose of those sections. For other sections, this preamble will address primarily the extent to which the final rule was changed from the proposal. Again, a complete discussion of the applicable sections may be found in the preamble to the proposed regulation.

Section 202.52 Royalties.

For purposes of clarity, one State commenter suggested that the word "royalty" be inserted before the words "rate specified", and the words "amount of royalty" be deleted and replaced with the words "royalty rate." This suggestion was made because some lessees have confused the computation of royalty rate and the computation of the amount of royalties due.

MMS Response: The MMS agrees that these suggested changes should be made for purposes of clarity and the final rule has been modified accordingly.

The MMS has removed from the final rules the two sections addressing the general responsibilities of MMS and lessees. All of these responsibilities are addressed in various provisions of 30 CFR and elsewhere. Thus, these sections were duplicative and, based on the comments received, caused confusion.

Section 202.100 Royalty on oil.

Two industry commenters recommended that this section state that no permission is necessary to exempt from royalty any oil used for the benefit of the lease, either on-lease or off-lease, and including communitized or unitized areas. In addition, another industry commenter stated that where agency approval is necessary, this section should address the procedure to acquire such permission.

MMS Response: The royalty-free use of oil is an operational matter covered by the appropriate operating regulations of the BLM and MMS for onshore and OCS operations, respectively, and, thus, is outside the scope of this rulemaking.

One industry commenter proposed that MMS consider expansion of § 202.100(b) to include appropriate royalty deductions for the oil equivalent cost of alternative fuels which may also be used for beneficial purposes on the lease.

MMS Response: This suggestion was not adopted. This issue is more properly directed to operational regulations, not value regulations, and is outside the scope of this rule. The MMS has included these provisions simply to reflect the general lease terms and regulatory provisions which prescribe the royalty obligation.

A State commenter suggested changes designed to help end the confusion about the distinction between computing the royalty rate and computing the amount of royalties due. MMS has adopted some changes to the wording of § 202.100 (a) and (b) for clarity. The same commenter recommended inserting "from the lease site" in paragraph (b) to assure conformity with the specific requirements of FOGRMA, 30 U.S.C. 1756. MMS has adopted this change.

Section 202.100(c) was proposed as § 206.100(d). The only comment received was from industry suggesting the addition of the phrase "because of negligence of lessee" after the words "offshore lease," in order to be consistent with section 308 of FOGRMA.

MMS Response: This subpart addresses the valuation of oil which has been determined to be "avoidably lost," not the reason(s) for that determination. Determination of "avoidably lost" and "negligence" is a function of MMS OCS Operations for OCS leases and BLM for onshore Federal and Indian leases. The addition of the recommended phrase, therefore, is considered inappropriate for inclusion in this rulemaking.

MMS has added at § 202.100(d) of the final rules a provision concerning production governed by a federally approved unitization or communitization agreement. Section 202.100(d) states that all agreement production attributable to a Federal or Indian lease in accordance with the terms of the agreement is subject to the royalty payment and reporting requirements of Title 30 of the Code of Federal Regulations even if an agreement participant actually taking the production is not the lessee of the Federal or Indian lease. Most important, however, § 202.100(d) requires that the value, for royalty purposes, of this production be determined in accordance with 30 CFR Part 206 under the circumstances involved in the actual disposition of the production. By way of illustration, if a Federal lessee does not sell or otherwise dispose of its allocable share of unit production, then it will be sold or otherwise disposed of by one of the other unit participants. If one of the unit participants other than the Federal lessee transports the oil to a terminal off the unit area under an arm's-length transportation agreement and then sells the oil under an arm's-length sales contract, the value, for royalty purposes, will be that person's gross proceeds less the costs of transportation incurred under the arm's-length transportation agreement. This provision does not address the issue of what person must report and pay the royalties, it only addresses the issue of valuation.

Section 206.100 Purpose and scope.

One industry commenter agreed with the concept that Indian Tribal and allotted leases be treated under the same oil valuation standards applied to Federal leases unless the specific lease terms require otherwise. That commenter also suggested that MMS support Indian Tribes and allottees, if requested, in marketing their royalty share of production. An Indian Tribe commenter asserted that it may be inconsistent to use the same oil valuation standards for Indian and Federal leases "Because of the trust responsibility of the United States to maximize Indian royalties, it may be inconsistent to have Indian and Federal leases treated the same under this subsection, especially if the policy of Interior is to earn a reasonable and long-term maximum rate of return and revenues for all parties."

MMS Response: The MMS believes generally that maintaining a single set of oil valuation regulations that apply to both Federal and Indian lands (except leases on the Osage Indian Reservation) provides for consistency and certainty in the determination of the value of oil for all lands administered by the DOI and will result in obtaining a reasonable and appropriate rate of return to all parties concerned. However, because of the lease terms of many Indian leases, MMS has included in the rules some additional valuation standards applicable only to those Indian leases.

In accordance with paragraph (b) of this section, where the provisions of any statute, treaty, or lease are inconsistent with these regulations, the lease, statute, or treaty provision will govern to the extent of that inconsistency. This policy also applies to court decisions—regulatory revisions will be required to the extent of any inconsistency with the existing regulations, provided they are not ambiguous or unclear in their intent. Thus, MMS maintains the DOI's responsibility to Indians by assuring that the regulations do not supersede the authority granted by the lease, or violate provisions of a statute, treaty, or court decision.

Several Indian respondents commented on § 206.100(b). One suggested that the proposed rules should expressly recognize that "where provisions of any Indian lease, or any statue or treaty affecting Indian leases, as stated or *as interpreted by the courts,* are inconsistent with the regulations, then the lease, statute or treaty, or *court interpretation* would govern to the extent of the inconsistency."

Another commenter expressed the view that "caution should be exercised before stating that 'the lease * * * provision shall govern to the extent of that inconsistency.' Many Indian allottee and tribal leases are very old and were entered into when industry practices were very different than they are now. The parties to the lease may have understood the lease to incorporate standard industry practice at that time. For this reason, some provisions may have been omitted from the written instrument. It may be proper to interpret some of those unwritten provisions in light of today's standards, but it may be grossly unfair to the royalty owner to so interpret others. One such example may be transportation costs. If transportation costs were not being deducted from royalties when the lease was entered into, transportation costs should not be deducted now, even though not mentioned in the lease. It is our conclusion that this should be considered and the regulations should make some mention of this consideration."

MMS Response: Obviously, MMS will comply with court orders and judicial decisions which affect these regulations. It is well known, however, that court decisions often focus only on parts of issues, leaving those decisions open to interpretation. Furthermore, a court's jurisdiction can limit the applicability of its decision. It is for these reasons that MMS has elected not to include an express reference to court decisions or court interpretations in this or any other Subpart of these regulations.

Contrary to the interpretation of this section by the second commenter, the regulations will not change any specific lease provisions.

Only two comments were received concerning § 206.100(c). One from industry endorsed the recommendation of the Royalty Management Advisory Committee (RMAC) Oil Valuation Panel which proposes placing a limit on the time period during which MMS may conduct an audit on a lease. It asserted that such a limitation "encourages prompt action, assures the retention of appropriate records, and gives the lessee assurance that its current business will not be disrupted by examinations of very remote payments. We believe a 6-year limitation is reasonable for both MMS and the lessee."

The Indian respondent is concerned that "Although all royalty payments made to MMS will purportedly be subject to later audit and adjustment, MMS's past audit record does not reassure the tribes that all royalties due will be collected."

MMS Response: These regulations concern valuation procedures, not accounting functions. All MMS audits are subject to the requirements found at 30 CFR 217.50, which does not specify any time limit during which MMS may conduct an audit. Because the reference in § 206.100(c) is intended only to be a general reminder that royalty payments will be audited, the recommendation to place a time limit on audits was not adopted. The MMS has modified the provision in the final rule to make it clear that this provision applies to payments made directly to Indian Tribes or allottees as well as those made to MMS either for Federal or Indian leases.

Proposed § 206.100(e) would have required royalties to be paid on

insurance compensation for unavoidably lost oil. Of the nine comments received concerning this section, eight from industry objected to MMS's concept of value. Their rationale can be summarized as follows: "Royalty is due on production saved, removed, or sold, and insurance proceeds for production unavoidably lost does not fit into any of those categories and is not a royalty assessable event. Because MMS does not share in the expense for insurance coverage, it should not receive any royalty or compensation received as a result of such coverage."

One of these comments expands on this argument by stressing that "if MMS insists on collecting a portion of such proceeds, then to the extent that insurance may cover the royalty interest of unavoidably lost production, proceeds should be shared only if the cost of insurance coverage is recognized as an allowable royalty deduction."

MMS Response: Pursuant to § 202.100(b) of the final rules, no royalty is due on production which is unavoidably lost. Therefore, MMS has concluded that no royalty is due on any insurance compensation for such production.

Section 206.101 Definitions.

Allowance—A total of four comments were received on this paragraph; two were from State entities, one from an Indian Tribe, and one from a Federal agency. One State commenter pointed out that this definition appears to be inconsistent with the sections of the valuation regulations dealing with transportation allowances (§ 206.104 and § 206.105). The word "allowance" is defined in terms of being "authorized," "accepted" or "approved," whereas the regulations state that a transportation "allowance" can be deducted without prior approval. Their concern is that the definition should match the usage in the regulations. An Indian commenter stated that the definition should "clearly specify that the transportation allowance applies only to transportation from *the lease boundary* to a point of sale remote from the lease and that such costs be reasonable, actual, *and necessary.*" A Federal agency comment stated that the definition is too liberal and would result in the Federal Government subsidizing oil companies' operation costs. They cited an example where a transportation allowance of as much as 50 percent could be granted for moving oil in lateral lines to off-lease measurement points; specifically, from wellheads to a Lease Automatic Custody Transfer (LACT) unit. One State commenter suggested that the definition is unnecessarily broad and recommended deleting the language "or an MMS-accepted or approved" as well as deleting the phrase "to a point of sale or point of delivery remote from the lease." This commenter also suggested adding the words "necessary and" before the word "reasonable." The rationale for making these changes is that there are other sections of the regulations that clarify "that MMS need not provide advance approval before a lessee could take an allowance." The "accepted or approved" language could be interpreted to suggest that "allowances are not subject to later adjustments by MMS after full audit, based on arguments that the allowance was accepted by MMS after receipt of the actual costs report under § 206.105(b)(2), or accepted under the terms of the regulations."

MMS Response: These regulations, in effect, "authorize" the lessees to deduct certain costs incurred for transportation from the value without prior approval. (See § 206.104 and § 206.105). Allowances computed by the lessee shall be "accepted" by MMS subject to review and/or audit. The MMS has not included a definition of the phrase "remote from the lease" in the final rules. To eliminate any confusion, MMS has replaced this phrase with the phrase "off the lease." Thus, transportation off the lease, other than gathering, is subject to an allowance. The MMS has included an express statement in the final rule that transportation allowances do not apply to gathering costs.

Area—A single comment was received from industry addressing this definition as being imprecise and in need of specified limits in order to define how large an "area" can be. In addition, the commenter proposed that the definition should be clarified by inserting the phrase "or producing unit" after "oil and/or gas field."

MMS Response: The definition seeks to encompass a concept that is very difficult to describe. Narrowing its scope by describing it in terms of size will only establish an arbitrary basis for the definition. To avoid this, MMS elected to retain the definition as proposed.

Arm's-length contract—A total of 41 comments were received on this definition—27 from industry, 4 from Indians, 1 from a State/Tribal association, 8 from States, and 1 from a Federal agency. The proposed definition of "arm's-length contract" generated a significant number of comments because it is, as one commenter noted, the "* * * linchpin of the benchmark system * * *." Because of the importance of this concept, it is not surprising that several commenters disagreed with the definition, either in part or in its entirety. Indeed, one State commenter described the reliance on the concept of "arm's-length" as a method of determining value to be "both inefficient and inappropriate" and suggested deleting the definition altogether. The majority of commenters, however, focused on what they considered to be flaws in the proposed definition and the specific recommendations they considered necessary to conclusively address those flaws.

One Indian commenter suggested that the basic flaw in the definition is the assumption that the interests of the lessee and the lessor are identical. This commenter pointed out that the courts "have recognized that the interests of lessees and lessors often diverge. See, e.g., *Piney Woods Country Life School v. Shell Oil Company* 726 F.2d 225 (5th Cir. 1984), *cert. denied.,* 105 S. Ct. 1868, (1985), *Amoco Production Company v. Alexander,* 622 S.W. 2d 563, (Tex. 1981)." Another State commenter described the definition as "clearly deficient because it is limited to formal affiliation or common ownership interests between the contracting parties." The assumption that arm's-length contract prices reflect market value "ignores the fact that parties may have contractual or other relationships or understandings which would cause them to price oil below its value, especially if the benefit of the reduced royalty burden can be shared by means of the oil sales contract." This commenter believed that the lessee's and lessor's interests may not be the same, and that the royalties due lessors is viewed by many lessees as a cost to be minimized, not maximized. Another comment submitted by the State/Tribal association cited the following as an example of a situation where, although the parties are unaffiliated, the market value may be less than the arm's-length contract price: "Thus, for example, the price received by a lessee/producer who is a captive shipper of a single purchaser pipeline, albeit unaffiliated, will be accepted as the value, despite the fact that competing market forces are not operating. Even if audit revealed facts that would indicate that the sales price is suspect, the government would be bound under the proposed regulations to accept it if the parties were nominally unaffiliated. The MMS proposal would even foreclose the use of standard price checks, presently used * * * in * * * audit efforts, to assure that contract proceeds represent the statutory requirement of fair market value of production." One State commenter concluded that in its attempt to

establish an "almost purely objective" test and provide for certainty in valuation, MMS has inadequately tried to justify "giving away the power to prevent manipulation of the public's royalties." Other State and Indian commenters claimed that the proposed definition, although it may be objective, remains "unworkable" mainly because it does not include any reference to "adverse economic interests" and "free and open market" nor would it serve as an effective audit tool. They urge MMS to use the definition first proposed by MMS to the RMAC because "that definition incorporates the common legal understanding of the term arm's-length—the existence of unaffiliated willing buyers and willing sellers of adverse economic interests operating in a free and open market—and is the only definition that can assure against valuation becoming an industry 'honor system.'"

One State commenter stressed that even though the inclusion of additional criteria ("adverse economic interest" and "free and open market") would increase subjectivity, "the appeals process is in place to provide protection against arbitrary decisions." Six State and Indian commenters specifically recommended that the proposed definition be replaced by the one proposed to RMAC by MMS in the draft regulations.

That definition reads as follows:

Arm's-length contract means a contract or agreement that has been freely arrived at in the open marketplace between independent, nonaffiliated parties of adverse economic interests not involving any consideration other than the sale, processing, and/or transportation of lease products, and prudently negotiated under the facts and circumstances existing at that time.

One Indian Tribal commenter suggested that "MMS should derive a definition of oil value for royalty purposes (instead of what they consider would be a necessary, all-inclusive, lengthy definition of arm's-length contract) which is simple and which represents the true value of the production. The [commenter] submits that such a definition must be based on the highest price paid or posted for similar oil in the same field or area." Another commenter stressed that the definition limits the discretion of the Secretary to select whatever method he/she considers appropriate to determine the value of oil for royalty purposes.

A large number of industry commenters agreed that the definition of an "arm's-length contract" as "a contract or agreement between independent and nonaffiliated persons" is sound and appropriate. However, these same commenters (plus some Indian and State commenters) objected to the phrase in the proposed definition "or if one person owns an interest (regardless of how small), either directly or indirectly, in another person" as being too "restrictive." [1] The rationale for this position is that the phrase appears to defeat MMS's intent to use arm's-length contracts as the principal valuation method. Many industry commenters addressed the need to clarify the definition in order to insure that joint ventures, joint operating agreements, tax partnerships, and other relationships where the "interest" of one party in another is not one of beneficial control, are specifically excluded. As one of these commenters put it: "Similarly, involvement in one or more joint operations with a competitor should not be viewed as materially affecting the arm's-length nature of transactions between the firms. However, the reference to joint venture in the definition of person, which is referenced in the proposed definition of arm's-length contract, could be improperly construed as including normal joint oil field operations conducted under the terms of joint operating or similar agreements. Joint operations clearly involve no interlocking ownership of the instruments of voting securities as between the firms. Joint operations are undertaken to accomplish effective reservoir management, to satisfy spacing requirements, or to share the enormous costs involved in certain OCS and frontier areas. Such joint operations are often mandated and/or approved and sanctioned by the various governmental agencies having jurisdiction and supervision over the operations (i.e., communitization, unitization, and development plans; and joint bidding agreements). They do not establish joint marketing rights, or otherwise erode the competitive desire of each owner to achieve maximum value for its share of production." Several industry commenters also complained that the ownership by one party of one share of stock in another party would confer affiliated or non-arm's-length status to virtually all otherwise arm's-length transactions between the two parties. They further stated that this would be true even if the pension plan of one party holds one share of stock in the other party. One Indian commenter suggested that MMS would waste its efforts trying to determine ownership interest: "There is also a problem with using ownership interest 'regardless of how small' in the definition. There is no definition in the proposed regulations of 'owns an interest.' Would the ownership of one share of stock be considered owning an interest? Parameters must be set and adhered to. When MMS starts trying to determine ownership interests no matter how small, an endless quagmire will develop, and time and resources will be devoted to this determination when they would be better spent on MMS's other duties."

Another industry commenter pointed out that the definition is inconsistent with the guidelines concerning beneficial control under generally accepted accounting principles, while a number of other industry commenters claimed that it eliminates certainty in valuation.

The majority of all the comments stress the need to replace the phrase "or if one person owns an interest (regardless of how small), either directly or indirectly, in another person" with a statement that specifies quantifiable limits that would be used to determine whether or not one party would be considered to have a controlling interest in another party. Nearly all of these comments recommended that MMS adopt the following language for the definition of control which has already been implemented by BLM as codified at 43 CFR 3400.0–5(rr)(3) (51 FR 43910, December 5, 1986):

Controlled by or under common control with, based on the instruments of ownership of the voting securities of an entity, means:

(i) Ownership in excess of 50 percent constitutes control;
(ii) Ownership of 20 through 50 percent creates a presumption of control; and
(iii) Ownership of less than 20 percent creates a presumption of noncontrol.

A few industry commenters recommended replacing the word "person" with the word "party" in the definition of arm's-length contract because they foresee that the use of the word "person" will "unnecessarily preclude contracts between joint ventures from qualifying as arm's-length." Similarly, one industry

[1] Several commenters used the word "restrictive" to mean that the language in the proposed definition regarding "if one person owns an interest (regardless of how small), either directly or indirectly, in another person" significantly restricts the number of situations where an arm's-length contract would actually exist. A few comments espoused this same position, yet they termed the definition as too "broad." As used in this discussion, MMS considers the word "restrictive" to represent the above-mentioned position, and the word "broad" to denote that the language of the definition is either too vague or not restrictive enough.

commenter suggested deleting the words "consortium" and "joint venture" from the definition for "person" ("party") for the same reason.

Finally, one industry commenter objected to "the implicit and explicit presumption throughout the Oil Proposal that proceeds actually received through affiliated sales are less than fair value. This presumption places an unfair, impractical, and impossible standard on a producer who, acting in its best economic interest, elects to sell to an affiliated entity. In this regard, a redefinition of the term "Arm's-Length Contract" is recommended to eliminate reference to and inclusion of de minimis relationships."

MMS Response: Based on the numerous comments concerning the "restrictive" nature of the definition and the soundness of the arguments, MMS has decided to modify the phrase "* * * or if one person owns an interest (regardless of how small), either directly or indirectly, in another person" with the "control" language found in the BLM's regulations at 43 CFR 3400.0–5(rr)(3).

Furthermore, MMS recognizes that for the purposes of determining whether a contract is arm's-length or non-arm's-length (e.g., affiliated), the test of affiliation must be derived contract-by-contract. This means that, for example, two companies may be involved as 60–40 partners in a joint venture to acquire and develop an OCS lease. If the company with the 60-percent interest buys the production from the joint venture company, that contract will be non-arm's-length. However, the two companies who formed the joint venture still may be considered by MMS to have an arm's-length sales contract between them for production from another lease, provided the 20-percent ownership threshold is not exceeded. In the event that one company does own a 20-percent, or greater, interest in the other, then MMS would presume that any transaction between them is non-arm's-length.

The MMS may require a lessee to certify ownership in certain situations. Documents that controllers or financial accounting departments of individual companies file with the Securities and Exchange Commission concerning significant changes in ownership (e.g., 5 percent) must be made available to MMS upon request.

The final rule also provides that to be considered arm's-length for any specific production month, a contract must meet the definition's requirements for that production month as well as when the contract was executed.

The very nature of an arm's-length contract implies an adverse economic interest between the contracting parties. The MMS believes that the intent of the final definition (which includes the BLM "control" language) satisfies the concerns of those commenters who felt that the definition should include specific "adverse economic interest" language. Moreover, MMS has included in the final rule a provision which requires that to be arm's-length a contract must reflect the total consideration actually transferred from the buyer to the seller, either directly or indirectly. For example, if the parties to the contract agree that the price for oil from a Federal or Indian lease will be reduced in exchange for a bonus price to be paid for other production from a fee lease, MMS will not treat that contract as arm's-length. MMS does recognize, however, that two parties may have a course of dealing so that some may argue that any contract between them could be construed as including some consideration other than the specified price. It is not MMS's intention to exclude such bona fide agreements from the definition of arm's-length contract.

This definition in no way limits the Secretary's authority to question or "look behind" an arm's-length agreement if there is reason to suspect that elements of the agreement are less than arm's-length.

Audit—Only a few comments were received on this proposed definition. All the comments focused on the portion of the definition which followed the first sentence. Generally, these comments suggested that the proposed definition limited the scope of MMS's authority, particularly with regard to Indian leases.

MMS Response: It is MMS's intention that the definition not be limited. Therefore, the final rule deletes everything following the first sentence of the proposed definition because the succeeding sentences were only intended to be explanatory.

Condensate—Only one industry comment was received on this proposed definition. This comment advocated adding the phrase "beyond normal lease separation procedures" after the word "processing" in the first sentence of the definition in order to clarify that "liquid hydrocarbons resulting from normal lease separation procedures are condensate" whereas "processing," in this context, refers to more sophisticated facilities that are generally located off lease.

MMS Response: This definition has been retained intact in the final rule. However, a definition of the word "processing" has been added for clarification purposes at § 206.101.

Contract—A single comment was received on this proposed definition. Although this State commenter recognized that "as a matter of law, oral contracts are enforceable," they recommend that the words "oral or" be deleted because they argue that "there is no way that the terms of such contracts can be adequately verified to assure that all of the consideration and benefits under it have been honestly detailed by the lessee under proposed § 207.4. Thus, the government, in a situation involving an oral contract, must assure itself that it has all of the information relevant to the transaction; reliance on the 'contract' document—drafted by one party only—would be insufficient."

MMS Response: The MMS has retained this definition as proposed because, in accordance with § 207.4, oral contracts negotiated by the lessee must be placed in written form and retained by the lessee. If the MMS believes that the written documentation is not a truthful representation of the actual terms of the sales agreements, the lessee may be liable for penalties for submitting false, inaccurate, or misleading data.

Gathering—MMS has included in the final rule a definition of gathering as the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off the lease, unit, or communitized area (if authorized by the BLM or MMS operations authority). In most instances, gathering is a cost of production or marketing for which MMS will not grant any deduction.

Gross Proceeds—Twenty-eight respondents commented on the definition of "gross proceeds"—22 from industry, 4 from states, 1 from an Indian tribe, and 1 from a State/tribal association. Of the 28, 2 endorsed the proposed definition as published, 2 recommended changes to clarify or expand the scope of the definition, and 24 objected to it for various reasons. The main objection was that the definition appears to include consideration unrelated to the value of production.

One State agreed with the language of the proposed definition and supported its endorsement as follows: "Such a definition must be all inclusive. Any exceptions would only serve as precedents for carving more exceptions, and invite creative accounting mechanisms aimed at escaping royalty obligations."

One Indian commenter recommended replacing the word "entitled" with the phrase "accrued or accruing to" while

another State commenter supported retaining the word "entitled" because it confirms the lessee's "obligation to act in the best interests of the lessor." This same commenter, however, pointed out: "In the Purpose and Background statement, MMS states that it is the intent of the regulations to include as royalty all of the benefits accruing, or that could accrue, to the lessee. However, the actual definition of gross proceeds does not encompass all potential benefits. For example, a lessee may accept a lower price for its production from a Federal lease for the opportunity to sell to the particular purchaser its production from other leases. Despite the difficulties of attributing a value to such an opportunity, it is a benefit accruing to the lessee under its sales contract. The language of the definition, however, suggests that 'gross proceeds' only encompasses consideration that has been stated in dollar terms. Thus, it technically does not include all of the benefits that could accrue under a sales contract."

A majority of those commenters that objected to the proposed definition expressed the same basic arguments in support of their position. Several industry commenters argued that the proposed definition contains language which is too expansive, claiming that the word "entitled" injects uncertainty and subjectivity into valuation. Additionally, this term is considered objectionable by some because, as one commenter stated, "the intent of 'entitled' is not clearly understood, nor is it a clearly defined legal term. Lessees cannot know how either they or MMS auditors will, or should, apply the 'entitled' concept." They recommend deleting this term and abandoning the underlying concept altogether.

A few industry commenters suggested that the proposed definition does not conform to the terms of Federal and Indian oil and gas leases nor the statutes under which they were issued. They argue that the present definition "attempts to collect royalty on consideration received by the lessee [for] other than production saved, removed, or sold from the lease" and that it seeks to redefine "value" to include income or credits which are unrelated to such production.

Other industry commenters agreed with this overall approach, especially as it relates to reimbursements for "production costs" and "post-production costs." One commenter addressed this point at length: "This definition must be changed to limit the royalty to the value of the production at the lease. The current expansive definition allows MMS to reach far beyond that value to confiscate the value added by post-production activities. The MMS has misread the *The California Co. v. Udall* decision to require the lessee to do much more than place production in a marketable condition. If production could be sold at a lease but the lessee determines to enhance the value by retaining control and further processing it, the value added or reimbursements for the costs of such further handling are not appropriate for consideration in the value of the product for royalty purposes."

Many of the industry commenters objected to the "laundry list" of services they asserted are unrelated to production being included as part of "gross proceeds." One industry commenter urged MMS to adopt language which would specifically allow a variety of costs to be deducted from gross proceeds in order to arrive at the value of production.

A few industry commenters concluded that the definition, in its present form, is inconsistent with industry practice and not responsive to the "interaction of market forces."

One industry commenter noted that "some of the items specifically identified as subject to royalty under the gross proceeds concept are the subject of ongoing litigation and the MMS should not preempt judicial decision through regulation."

One State commenter asserted that the definition is only necessary as a determinant of minimum value and, in this sense, should be as expansive as possible. This commenter suggested that "the words 'but is not limited to' need to be added after the words 'gross proceeds, as applied to oil also includes.' " This language was thought to be needed because there is "no reason to restrict the term gross proceeds to encompass only those items listed." Furthermore, this commenter is concerned that the present language will "restrict the Secretary's authority to react if different types of sales arrangements arise in the future."

Another industry commenter asserted that there are "serious ambiguities and inconsistencies" in the definition of gross proceeds "as related to transportation deductions imposed by oil purchasers. These ambiguities and inconsistencies could be interpreted to preclude the use of a market-based value for royalty oil where oil purchasers in the area deduct actual transportation costs from their posted prices."

A large number of industry commenters recommended that MMS adopt the definition proposed by the RMAC Oil Valuation Panel which reads as follows: "Gross proceeds (for royalty payment purposes) means the consideration accrued to the lessee for production removed or sold from a Federal, Tribal, or Indian allotted lease."

MMS Response: MMS has adopted a definition which is modified slightly from that proposal for purposes of clarification. MMS has retained the intent of the proposed language because gross proceeds to which a lessee is "entitled" means those prices and/or benefits to which it is legally entitled under the terms of the contract. If a lessee fails to take proper or timely action to receive prices or benefits to which it is entitled under the contract, it must pay royalty at a value based upon that legally obtainable price or benefit, unless the contract is amended or revised. As is discussed more fully below, gross proceeds under arm's-length contracts are a principal determinant of value. MMS cannot adopt that standard and then not require lessees to pay royalties in accordance with the express terms of those contracts. (See § 206.102(j)). It is MMS's intent that the definition be expansive to include all consideration flowing from the buyer to the seller for the oil, whether that consideration is in the form of money or any other form of value. Lessees cannot avoid their royalty obligations by keeping a part of their agreement outside the four corners of the contract.

The so-called "laundry list" of services are all benefits that a lessee may be legally entitled to under the terms of the contract and are considered part of the value for the production from the lease. Costs of production and placing production in marketable condition are (with a few exceptions addressed later in this preamble) considered services that the lessee is obligated to perform at no cost to the Federal Government or Indian lessor.

Indian Tribe—MMS has corrected the typographical error in the proposed definition and has replaced the word "state" with the words "United States."

Lease—Only one Indian respondent commented on this definition. The comment focused on the following issue: "Inclusion of any contract, profit-sharing arrangement, joint venture, or other agreement in the term 'lease' as opposed to a more standardized Bureau of Indian Affairs (BIA) form lease may cause confusion. Most joint ventures and profit-sharing arrangements contain

explicit provisions on payment of expenses and division of revenues."

MMS Response: Contracts, profit-sharing arrangements, and joint ventures are all examples of types of valid leases already in existence. All specify royalty provisions, some more detailed than others. Nonetheless, they all qualify under the definition of "lease." Therefore, MMS has retained the proposed definition in the final rule.

Lessee—The proposed definition of "lessee" generated comments from 13 different respondents—12 from industry and 1 from a State. By far the most significant issue raised is that the proposed definition is inconsistent with the statutory definition of "lessee" found in the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA). The proposed definition uses the phrase "or any person who has *assumed* an obligation" whereas the language in FOGRMA uses the word *"assigned"* in place of the word "assumed." The commenters argued that MMS's use of the word "assumed" expands the definition beyond the intent of Congress and "seeks to invalidate the lease provisions with respect to royalty payment * * *" They further asserted that there is no reason to redefine the term and recommended using the definition found in FOGRMA at section 3(7), 30 U.S.C. 1702(7).

Two industry commenters suggested that the definition be narrowed to "exclude persons who have assumed an obligation to make royalty and other payments required by the lease." Their argument focused on the difference in responsibilities between lessees and payors: "The payor is not necessarily a lessee and should not be defined as one. A lessee is bound by the terms of a lease agreement while a payor is not."

Two industry commenters suggested that the definition as provided in FOGRMA should be revised for the purposes of these regulations for the sake of clarity.

The State commenter objected to the proposed definition because it has the effect of spreading "the reporting and payment responsibility among numerous parties. With each of these parties reporting and paying separately, no single party has the responsibility to insure that 100 percent of all production is reported and 100 percent of the royalties are paid."

MMS Response: The MMS agrees with the comments regarding consistency with the definition found in FOGRMA and, therefore, has replaced the word "assumed" with the word "assigned." The term "assigned," as used in this Part, is restricted to the assignment of an obligation to make royalty or other payments required by the lease. It is in no way related to lease "assignments" approved through the MMS, BLM, or BIA.

Load Oil—Two comments were received on this proposed definition—one from a State and one from industry. The industry commenter suggested that the word "fuel" be added as noted in the following proposed language: "*Load oil* means any oil which has been used with respect to the operation of oil or gas wells for *fuel,* stimulation, workover, chemical treatment, production or such other purposes as the operator may elect."

The State commenter recommended deleting the phrase "as the operator may elect" from the definition because: "There is no reason to institutionalize, in an enforceable regulatory form, a standard of lessee discretion."

MMS Response: Load oil is distinguished by MMS as oil used for the purposes of stimulating production through injection into the wellbore. Using oil for the purposes of enhancing the value of, or otherwise treating, lease production at the surface is not considered "load oil." Thus, oil used as fuel is not load oil. Also, in order to eliminate confusion, MMS has deleted the phrase "or such other purposes as the operator may elect."

Marketable Condition—Three respondents commented on this definition— one from industry, one from a Federal agency, and one from a State. The State commenter addressed the following concerns: "The definition states that product will be deemed marketable if it is 'in a condition that will be accepted by a purchaser under a sales contract typical for the field or area.' Such contracts, now or in the future, may provide that the purchaser bear the costs of the treatment necessary to place products in a marketable condition. Under the definition, as written, therefore, there would be a theoretical market for untreated product, and MMS would lose the benefit of the increased value attributable to requiring the lessee to perform the necessary conditioning.

"An additional problem exists because of the difficulty of determining what is 'typical' for the field or area. This is because of the same informational difficulties that disable MMS from adequately applying the majority portion analysis. Without full access to the range of sales arrangements that may exist for production in a given area, MMS will be forced to rely on lessee-selected documentation in order to determine what type of conditioning is typical' for the area."

MMS Response: The MMS believes it is highly unlikely that the oil industry would change the quality requirements for oil sales to avoid paying royalties on nonrecoverable marketing costs. If such an arrangement occurred, MMS would then need to determine if the arrangement is an attempt to avoid paying royalties on the market value of the oil, or a contract to not only purchase the oil, but to place it in marketable condition as well. In either case, the costs for placing the product in marketable condition would not be an allowable deduction from the value for royalty purposes. (See § 206.102(i)(1).)

Net-back method—One industry respondent and two State respondents commented on the proposed definition. The two States objected to the proposed definition and the industry commenters recommended adding clarifying language. The following discussion outlines the position of the two State commenters that found the proposed definition objectionable: "Briefly, our objections are twofold: 1. Net-back is a useful method to independently cross-check lessee declared values, and thus its use should not be restricted to those situations in which the 'first' sale, transfer, or use is downstream from the lease.

"Second, net-back should be allowed from any reasonable point at which a value can be ascribed to the product. There is no guarantee that the 'initial sales point' or 'first alternate point' will exhibit the open market conditions essential for attribution of a true value for the products.

"We therefore propose the following alternate definition: Net-back method means a procedure for valuing or verifying prices assigned to lease products or for independent cross checking of the validity of the gross proceeds of lease products or of prices posted or paid in a field or area. The procedure involves calculating back from any downstream point at which values for such products reasonably and fairly can be derived. In applying the net-back, consideration will be given to the reasonable costs of processing and transportation from the producing lease, unit or communitized area to arrive at a value for the products at the lease."

The industry commenter recommended that the following language be added to the proposed definition: "In net back calculation the alternate point used for value determination shall be the point which is the closest point to the lease at which a price for similar lease products can be established by alternate means. Such

alternate means may include posted prices or published spot market prices."

MMS Response: Upon review, MMS determined that the proposed definition of net-back was too broad—it applied to any situation where lease production is sold at a point off the lease. MMS's intent is that a net-back method be used for valuation primarily where the form of the lease product has changed, and it is necessary to start with the sales prices of the changed product and deduct transportation and processing costs. An example would be where oil production from a Federal lease is used on lease to generate electricity which is then sold. If the value of the oil cannot be determined through application of the first three benchmarks in the regulations (see § 206.102(c)), then a net-back method would involve beginning with the sale price of the electricity and then deducting the costs of generation and transportation, thus working back to a value at the lease. MMS has revised the definition so it more clearly applies to this type of situation.

Person—The MMS received a total of four comments on this definition. One Indian commenter supported the inclusion of "joint venture" in the definition of "person" while two industry commenters recommended that "joint venture" be deleted. The rationale these two commenters rely on as the basis for recommending deletion is that the term "person" is used in the definition of "arm's-length contract" and if "that definition is not altered as suggested herein, then inclusion of a joint venture in the definition of person will further narrow the definition of arm's-length transaction by clouding the issue of control and the application of the definition [of] arm's-length to other joint venturer transactions." Another industry commenter advocated replacing the word "firm" with the word "company" because they believe that, in this context, it would be more appropriate.

MMS Response: Because the definition of arm's-length contract has been modified to include the BLM "control" language, most of the comments on this definition no longer are relevant. Therefore, MMS will retain the proposed definition of "person" intact in the final rule.

Posted price—The proposed definition received four comments, two of which recommended expanding the definition of posted price to include the phrase "or at the specific onshore or offshore terminal(s) listed in the announcement" after the words "in the field." These industry commenters stated that there are "currently very few 'field postings,' rather there are terminal postings" and that expansion of the definition as noted above would avoid confusion in applying the definition.

Another industry commenter believed that the word "posted" is outdated and that some purchasers may not publish a price bulletin, instead providing price quotations or notices to any seller desiring to do business with the purchaser.

A State commenter recommended deleting the phrase "net of all deductions" for the following reasons: "The net of all deductions' language should be deleted. MMS has proposed a system of allowances, which as a practical matter makes the 'net of deduction' language unnecessary for the purposes of defining 'posted price.' This proposal could be interpreted to institutionalize the allowances without a mechanism of independent cross check by MMS.

"Common industry deductions are for transportation and conditioning. Yet there are no restrictions upon what a poster can include as a deduction from the posted price. Thus MMS must retain the power to scrutinize such matters, and add such deductions back into the value of the production when necessary."

This same commenter believed that the definition is too restrictive: "We also object to restricting the definition of posted price to formal price bulletins. Rather, the definition should be broader and include both prices posted and those regularly paid. It is not unusual for a buyer to come into the market and offer publicly a price for crude, which is like a posting but not necessarily a price bulletin. Such publicly announced offers to buy could be at a price higher than offered in a price bulletin, and are no less 'market determined' than supposedly are postings in bulletins. Price bulletins are, generally, only circulated by the major companies and thus reliance on them may give undue advantage to the ability of those companies to establish prices."

MMS Response: The MMS is expanding the definition in the final rule to include references to onshore and offshore "terminal postings" and "price notices." For clarification purposes, the word "condition" replaces the word "quality" which follows the word "marketable" in the first sentence. The phrase "net of all adjustments" has been revised to read "net of all adjustments to." As used in this definition, the term "adjustments" refers to deductions from the price of oil for quality adjustments such as API gravity and sulfur content. Adjustments for location also may be taken into account where appropriate.

Processing—MMS has added a definition of "processing" as any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression are not considered processing. Under this definition, the changing of pressures and/or temperatures in a reservoir is not considered processing.

Section 206.102 Valuation standards.

Section 206.102(a) sets the basic standard that the value for royalty purposes will be the value of the oil determined pursuant to this section less applicable allowances. One State commenter recommended that the phrase "less applicable transportation allowances" be deleted because it is unnecessary, confusing, and because it implies that the lessee can deduct the transportation allowance from the value received and report the resultant reduced value as a single line item.

MMS Response: The regulation as adopted refers to "applicable" allowances, which includes both transportation allowances and the limited allowances provided by § 206.102(i)(2) of the final rule. It does not imply that any and all costs can be deducted. Also, it refers to "this Subpart" which includes § 206.105. That section provides complete details regarding transportation allowances. Therefore, this suggestion was not adopted.

Two Indian commenters recommended that the paragraph be modified by (1) deleting any reference to the transportation allowances because they are improper for Indian leases, and (2) adding the phrase "in marketable condition."

MMS Response: Transportation allowances are allowable under most Indian leases. It has been MMS's practice to grant such allowances. If an Indian lease restricts such allowances, then the lease terms will govern.

The MMS does not agree that the phrase "in marketable condition" should be inserted prior to the word "determined." Section 206.102(i) requires that oil be placed in marketable condition at no cost to the lessor. Thus, because § 206.102(a) provides that value be "determined pursuant to this section," the marketability requirement already is included.

The MMS is including in the final rule a new paragraph (a)(2) which states that for any Indian leases which provide that

the Secretary may consider the highest price paid or offered for a major portion of production (major portion) in determining value for royalty purposes, MMS will, where data are available and where it is practicable, compare the value determined in accordance with the prescribed standards with the major portion. The rule provides that the value for royalty purposes generally will be based upon the higher of those two values. However, if MMS determines that the major portion results in an unreasonably high value, then it will not be used for royalty purposes. This could happen, for example, in a falling market where a seller under an arm's-length contract has the price lowered. If that price is truly the result of an arm's-length process and is lower than the major portion, MMS could conclude that the arm's-length price is the highest reasonable value for royalty purposes.

The MMS is also including in paragraph (2) a description of how the major portion is computed. It will be determined using like-quality oil. The production will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent (by volume) plus one barrel of the oil (starting from the bottom up) is sold.

The MMS believes that for these Indian leases, by comparing the major portion to values determined using arm's-length contract prices or the benchmarks for non-arm's-length contracts, and generally using the higher of the two, the Indians will be receiving royalties in accordance with their contract with the lessee.

Section 206.102(b) provides the valuation procedure for valuing oil sold pursuant to arm's-length contracts. Many comments were received regarding the concept of valuing oil on the basis of gross proceeds received under an arm's-length contract. They were about equally divided in number as to those in favor and those opposed.

Seven State, seven Indian, and one State/Indian association disagreed with the concept of valuing oil on the basis of gross proceeds received under an arm's-length contract. The commenters contend that, historically, gross proceeds has been regarded as a minimum value and that it has long been recognized that a market value clause in a lease "is distinctly and substantially different from a gross proceeds clause." They were concerned that the concept establishes an industry honor system. Also, concern was expressed that the proposed regulations be consistent with the provisions of the Indian lease agreement, and they questioned whether the proposed regulation permits the Secretary to discharge his/her responsibilities to the Indian lessors. These commenters maintained that whether an arm's-length transaction yields market value depends upon the definition of arm's-length contract.

Two State and two Indian commenters expressed concern that the proposed regulations will institutionalize an industry "honor system" for valuation of Federal royalty production. The commenters stated that the rules provide no mechanism for independent oversight and cross-check of lessee declarations of value and impose such impossible information burdens on government that they can only result in total reliance on lessee-generated information. They stated further that whether an arm's-length transaction yields market value depends upon the definition of "arm's-length" and whether independent price checks confirm the receipt of proceeds.

The commenters pointed out that many sales arrangements may appear to be arm's-length on the surface, but in actuality the producers are "captive shippers" subject to forced sale and the producer's take-it-or-leave-it price. This scenario is stated to be contrary to the common legal understanding of an arm's-length market-determined price. The commenters noted that MMS's definition of "arm's-length" does not even contain the minimum acceptable requirements, in a legal sense, necessary to assure that such contracts are, in fact, arm's-length. They argue that the use of an arm's-length/gross proceeds valuation method requires that such matters as open-market conditions and the relationships between parties, beyond mere affiliation, be investigated. Also, the commenters stated that MMS does not confine arm's-length to those contracts that involve only the consideration for the sale of lease products. Coupled with the proposed definition of gross proceeds, the commenters believe "this allows lessees the opportunity to manipulate the prices received for their production from a Federal lease by accepting a lower price in order to sell production from other non-Federal leases, possibly at a more profitable price."

MMS Response: The purpose of these regulations is to determine the reasonable market value of a commodity and use that value for royalty computation purposes. The market value is best determined from the interaction of competing market forces, and an arm's-length contract price is the product of market forces at work. Accordingly, MMS will generally accept the gross proceeds received under an arm's-length contract as the proper value for royalty computation purposes. The usual lease provisions do not preclude the acceptance of gross proceeds under an arm's-length contract as the proper value. In fact, most Indian leases expressly provide that the lessee's proceeds may be considered by the Secretary to be conclusive evidence of the value of production. As discussed above, for many Indian leases, MMS will also consider the major portion in determining the royalty value.

The MMS has added a provision to the final rule which provides that MMS will determine during audits whether the lessee's contract reflects all the consideration transferred either directly or indirectly from the buyer to the seller for the oil, or whether there may be factors which would cause the contract not to be arm's-length. MMS recognizes that some parties may have multiple contracts with one another. This fact alone would not cause a contract to be considered non-arm's-length. Rather, there must be some indication that the contract in question does not reflect the full agreement between the parties.

The MMS also has added a new § 206.102(b)(2) which provides that MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer for the oil.

One Indian commenter suggested that the lessee should certify that this is the highest price he could have received for that oil at the time of the sale. The same commenter also noted that MMS's regulations, at a minimum, must be consistent with the language of the Indian leases. Other Indian commenters stated that the concept of basing royalty on gross proceeds received under an arm's-length contract is not in accord with the responsibilities of the Secretary. One of these commenters stated that "the lease and regulations provide that that value be determined, not gross proceeds. Gross proceeds is merely evidence of such value. Acceptance of gross proceeds as conclusive evidence of value is an abrogation of the Secretary's fiduciary duties, especially if the previous MMS practice of accepting reports from lessees without scrutiny continues."

MMS Response: The MMS believes that the regulations as adopted, with the changes discussed earlier will permit the Secretary to discharge his/her responsibilities properly.

One State commenter objected to the phrase "monitoring, review and audit" or similar phrases which appear throughout the proposed regulations because it suggests that the terms listed are synonymous. An MMS review or

reconciliation is not the same as a full audit. The commenter suggested that the following paragraph be added:

"( ) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring or other like process that results in a redetermination by MMS of value under this section shall be considered final or binding as against the Federal Government, its beneficiaries, the Indian Tribes or allottees until after full audit."

Also, the commenter suggested that the words "lease terms, or relevant statutes" need to be added after the words "requirements of these regulations" in proposed §§ 206.102 (b) and (d)(1), for purposes of clarification and precision.

MMS Response: The suggested additional paragraph language has been included in the final rule as § 206.102(k) with minor modifications. This paragraph reflects MMS's longstanding view that a value determination based on limited review does not estop the MMS from redetermining that value until an audit has been completed and the audit period formally closed. The phrase "lease terms, or relevant statutes" has not been added to § 206.102(b) because there is a provision in the regulations that in the event of conflict the lease terms govern. Likewise, all persons are subject to statutory requirements.

Two suggestions were made regarding the establishment of a floor value. One Indian commenter objected to the proposed regulations because they "* * * would permit MMS to rely upon an industry honor system for valuation of Federal royalty production." However, if MMS's proposed valuation approach is to be adopted, they suggested that § 206.102(b) be revised to read as follows:

"The value of oil which is sold pursuant to a contract shall be the gross proceeds accruing, or which could accrue to the lessee, *provided that* such proceeds do not fall more than 10 percent below the greater of the highest price paid or posted for similar oil in the same field or area. If such proceeds do fall more than 10 percent of such prices, the value of oil in that case shall be 10 percent below the greater of the highest price paid or posted for similar oil in the same field or area." It was stated that this approach will permit MMS to have a uniform and administratively simple benchmark to establish market value, rather than "evaluating each contract on a case-by-case basis in light of the many possible indicia of a sale at less than fair market value * * *."

Another Indian commenter stated that: "The proposed regulations would allow substantial manipulation and undervaluation of the royalty amount. Most centrally, it is unacceptable to allow lessees to use contract prices as the royalty value without adequate safeguards to assure a fair valuation for the public s resources. At a minimum, only prices under *genuine* arm's-length contracts should be acceptable for royalty purposes. The proposed regulations would allow collusive contracts to qualify as 'arm's-length contracts.' " It was also stated that if MMS remains intent upon accepting royalty on the basis of what the commenter considers to be below-value contract prices, "we urge that MMS at least impose a floor value, such as 80 percent of the value of production as determined under the 'value' criteria applicable to oil not sold under arm's-length contracts."

MMS Response: The MMS generally does not believe that establishment of a "floor value" (other than gross proceeds) is appropriate because it could result in royalty being assessed on a value greater than the lessee received under an acceptable arm's-length contract. Where an arm's-length contract operates to set the price at which the lessee can sell the production, that contract likewise should set the royalty value in most circumstances. However, under the lease and the regulations, MMS has the authority to establish value for royalty purposes and will do so for non-arm's-length contracts where it is justified, even if such value is higher than the gross proceeds received by the lessee. Also, as explained above, for many Indian leases, because of the specific lease terms, MMS will compare values determined using arm's-length contract prices with the highest price paid for a major portion of production, and generally use the higher of the two.

One Indian commenter raised the question of what "which could accrue" means and also pointed out that if the value of oil is to be based on gross proceeds, the regulations need to be more precise in stating which gross proceeds are to be used.

MMS Response: The regulations include a detailed definition of the term "gross proceeds." The MMS believes the definition is adequate. MMS has deleted the phrase "or which could accrue" from the final rule.

Eleven industry, one Federal agency, and one individual commenter approved of the concept of valuing oil on the basis of gross proceeds received under an arm's-length contract. Basic reasons for approval were stated in one comment as follows: "This standard is fair and reasonable; it will promote necessary certainty and consistency for the lessor and lessee alike; it is based on the lease language; it is administratively feasible; and it relies on an objective valuation mechanism—the market. It is appropriate in arm's-length situations because both the buyer and the seller have agreed to be bound by the best price each thought it could get for the duration of the contract. In such circumstances the royalty owner's interest in securing fair market value is protected by the arm's-length nature of the transaction." The 11 industry commenters also objected to use of the phrase "or which could accrue" in the first sentence. This objection can best be summarized in the following comment: "Use of the phrase creates uncertainty and subjectivity and should not be implemented in regulations which must have certainty as a foundation." Industry commenters stated that it is unfair for the lessor to determine after the fact that proceeds "could be accrued." Also, one of these commenters noted that lessees act in a competitive market and "in the absence of fraud, cannot fairly be held to a *post hoc* determination that proceeds could have accrued." One of these commenters summarized as follows: "In sum, the proposed definition of 'gross proceeds' is in need of substantial revision. The MMS should modify it to include only those monies actually received for the sale of production. Other regulations which would require payment of royalties on phantom proceeds should also be amended accordingly."

MMS Response: The MMS believes that gross proceeds under an arm's-length contract generally constitutes the market value of a commodity. This does not preclude MMS from establishing a value where necessary; e.g., the contract does not meet MMS's standards for an arm's-length contract or the lease agreement requires a different value. The phrase, "or which could accrue," is deleted from the final rule. As noted above, many commenters thought that this phrase would allow MMS to second guess the price which the lessee agreed to in its arm's-length contract by arguing that other persons selling oil may have received higher prices—thus, more proceeds "could have accrued" to the lessee. This was not MMS's purpose in including the "or which could accrue" language in the proposed rule. Rather, MMS's intent is to ensure that royalties are paid on the full amount to which the lessee is entitled under its contract, not just on the amount of money it may actually receive from its purchaser. However, MMS is satisfied that the phrase "the gross proceeds accruing to the lessee" properly includes all

consideration to which the lessee is entitled under its contract, not necessarily just what it receives from the buyer. Therefore, the "or which could accrue" phrase was unnecessary. Because it caused confusion as to MMS's intent, it was deleted from the final rule.

Many comments were received regarding the proposed benchmark system in § 206.102(c). They were about equally divided in number as to those in favor and those opposed.

Seven States, eight Indians, and one State/Indian association objected to the proposed benchmark system. Most of these commenters supported highest posted prices using the net-back procedure as verification. One of their objections to the benchmark system is that the proposed methodologies are unworkable and provide no reasonable method of verification. Another objection is that the proposed system would impair effective oversight and reduce royalties. Also, these objectors state that in their view the proposed procedures would severely burden the audit program and, as a practical matter, would preclude adequate verification of the "lessee's declarations." In addition, they stated that the use of the net-back procedure is unduly restricted, and, to the contrary, should be used frequently for independent verification. They believe that more readily verifiable methods should be used to ensure that fair market value is being received.

One of these commenters summarized a number of objections as follows: "Historically, gross proceeds has been regarded as minimum value; however, the proposed benchmarks appear to be primarily aimed at converting gross proceeds as *the* value. Gross proceeds is not necessarily fair market value. Published gross proceeds are not always all consideration received, for example, drilling advances and special equipment lease agreements." Also, "* * * no mechanisms are provided to cross-check * * * values reported under the first three benchmarks; since MMS has taken the notion that it does not have the authority to obtain access to other arm's-length contracts from producers not obligated to report to MMS, comparisons could not be made." It was also stated that "The most effective benchmark, net back calculation, would never be used because of the prioritized order of other valuation methods."

MMS Response: The MMS believes that the proposed benchmark system is workable and fair. Obviously, for OCS leases, MMS has access to information regarding all posted prices and contracts (if any). In addition, the majority of onshore fields with Federal lands are comprised of a significant percentage of such lands (if not the majority) so that needed price information is readily available. In many cases, Indian lands comprise a significant portion of an oil field. Where necessary, information sometimes can be obtained from the appropriate State agency. Although price and field boundary data are available for most onshore leases, the acquisition of volume data associated with an arm's-length sale has been difficult to obtain. Accordingly, MMS has added § 206.102(d) which provides that any Federal or Indian lessee will make available upon request to the authorized MMS, State and Indian representatives, and others, arm's-length sales and volume data for like-quality production in the field or area or nearby fields or areas. Undoubtedly, there will be a few cases where it will be difficult to obtain needed information, but this is true of any procedure adopted.

The MMS believes that in the vast majority of cases gross proceeds constitute market value. In those cases where this is not true, MMS will establish an appropriate value for royalty purposes. "Arm's-length" sales will not be accepted without question. The MMS will obtain needed information to ascertain that they are truly arm's-length as defined in the regulations.

One Indian commenter criticized the benchmark system as follows: "The utter failure of MMS to recognize its obligation to maximize tribal royalties is evidenced also in the provisions governing valuations where arm's-length contracts do not exist. Each of the three alternative methods require a determination that the lessee's sales price is similar to that for purchases of significant quantities of like oil in the same field or area. The MMS, however, relies on lessee-generated information for that determination and, moreover, relies upon the truthfulness of that information. For example, under alternative number one, MMS proposes to look at the lessee's contemporary posted prices. Posted prices in the oil industry, however, are generated by the purchasers and not the sellers. Either MMS had made an error in its drafting or this benchmark plainly is so ridden with potential conflicts of interest that it can not possibly be urged as consistent with the federal fiduciary duty to maximize Indian oil and gas resource returns."

Another Indian commenter suggested that the desired goal of certainty can be accomplished by use of the highest price paid method: "MMS' embracement of the contract price approach in its drive towards certainty in value can be as easily achieved through the highest price paid method. It would also encourage producers when negotiating contracts to come as close to that figure as possible knowing that is what they will have to pay the royalty on. The contract sales approach proposed by MMS does not encourage obtaining the maximum value for the resource by the purchaser [lessee]."

MMS Response: In many cases the lessee, being a purchaser, has published a posted price bulletin. Posted price bulletins are generally available. In addition, the lessee must retain all data which are subject to audit. From experience, MMS does not believe that basing all royalties on the highest price in the field or area is fair or in the best interests of the Federal or Indian lessor. Therefore, such a standard was not adopted.

One State commenter noted that the modifier "contemporaneous" in three of the sections is vague and undefined. "For a purchase under a posting or contract to be used as an indicia of value for the monthly reporting period, it should relate to production during the same reporting period."

MMS Response: MMS has added a § 206.102(c)(6) to the final rule which defines "contemporaneous" as postings or prices in effect at the time the royalty obligation is incurred. In effect, this means the postings or contract prices in effect at the time oil is removed, sold, or otherwise disposed of in a manner which results in royalty being due on the oil.

According to one State commenter, "It is difficult to establish an alternative system to calculate fair market value * * *. The MMS should use the posted price criteria of the benchmark system verified by a net-back analysis to assure the credibility of posted prices."

MMS Response: The MMS believes that the use of a net-back analysis on a routine basis to verify oil value is impractical and unnecessary.

Two Indian commenters expressed concern about the prioritized benchmark system. They argued that restricting the Secretary's ability to use different methodologies in any order the Secretarys chooses will tie the Secretary's hands in dealing with difficult situations.

MMS Response: The MMS believes that the regulations adopted will permit the Secretary to discharge his/her responsibilities to the Tribes and allottees and will provide certainty in the valuation process to both the lessees and lessors. Although a prioritized benchmark system does limit flexibility,

this drawback is outweighed by the benefits of certainty.

One State commenter thought there is a lack of guidance in administering the prioritized benchmark system, and that MMS does not indicate what kind of evidence will be sufficient to permit an auditor to continue down the list of benchmarks.

MMS Response: The MMS will require that the lessee make a reasonable effort to apply a benchmark before proceeding to the next. Auditors must be satisfied that lessee information is sufficiently accurate and complete to implement a benchmark. The addition of § 206.102(d), whereby lessees must provide arm's-length sales and volume information, will assist in the enforcement of these "comparability" requirements. It would be impossible for MMS to attempt to implement a procedure where government has to make all the decisions. Such a procedure would impose a tremendous administrative burden which would be very costly.

Three industry and two State commenters expressed concern regarding the lack of an adequate definition of the terms "significant quantities" and "field or area", and the administrative problems that will result therefrom. One state commenter stated that the term "significant quantities" is vague and undefined. An industry commenter recommended that the term "significant quantities" be deleted because (1) posted prices in an open marketplace "are for no other purpose than determining market value", and (2) the lessee has no way of knowing the quantity of volumes purchased by other purchasers in the area.

MMS Response: As was discussed in the preamble to the proposed rules (52 FR 1858, January 15, 1987), the term "significant quantities" is variable depending on the sales volumes from the field and the volume of production. What constitutes significant production from an onshore field may not be significant for an OCS field. Therefore, "significant quantities" will vary case-by-case.

One Indian commenter stated that "* * * many posted prices are artificially low because there is low demand, but there is still a threshold low amount where a company will purchase more than their demand" and recommended that "* * * the totality of the circumstances should be utilized (and set forth in the regulations), including spot markets, highest posted prices, and to some extent, posting for similar oil in other fields."

MMS Response: The current regulations, which are being revised in response to heavy criticism, list the various criteria with no specific priority. The purpose of the benchmark system is to provide all concerned with a reasonable degree of certainty as to criteria to be used in valuing oil.

One Industry commenter stated that the prioritized benchmark system "imposes a prejudicial valuation on an affiliated lessee" because a nonaffiliate receiving the same price as an affiliate would pay on actual proceeds received, whereas the affiliate may have to pay a higher royalty under, for example, benchmark § 206.102(c)(2). The recommendation was made that "* * * the first applicable of the following subsections "* * * language in § 206.102(c) be replaced with "* * * any of the applicable subsections."

MMS Response: The situation described could occur. However, MMS believes that, generally, posted prices for like-quality oil in the same field or area will be comparable. Thus, there likely will be little or no disparity in the values in most situations.

Fourteen industry commenters, one Federal agency, and one individual approved of the proposed benchmark system. One industry commenter stated that they "* * * strongly support the adoption of clear and consistent standards of valuation for royalty oil based upon the true value of the product—the price received in the marketplace for the sale of that oil. The valuation proposal * * * recognizes the interaction of competing market forces and recognizes that a seller of oil will normally negotiate the best deal it can to further its own interests. The use of a price that is generally available to all sellers is a much more reasonable approach to the determination of "value" for a given supply of oil than the arbitrary selection of a price that one seller may have received under circumstances that do not include all sellers. Where an arm's-length contract does not exist, the benchmark system of valuation permits an objective procedure for arriving at the valuation based upon posted prices which have been the basis for sales of oil for many years." Another industry commenter supported both the benchmarks and their prioritization because both will add certainty to valuation determinations. Also, the use of the lessee's contemporaneous posting will provide a "benchmark valuation for many major producers." One industry commenter noted that "This ordering of the benchmarks is the result of extensive public comment which showed that, for valuation of oil, posted prices should be moved closer to the top of the hierarchy insofar as posted prices account for the vast majority of oil transactions."

MMS Response: The MMS believes that the proposed benchmark system is a valid and realistic system for determining the value of oil not sold pursuant to an arm's-length contract. The benchmarks are primarily based on posted prices which are the normal basis for oil sales and which reflect the price of oil in a free and open market. Posted price information for significant quantities of like-quality oil sold from a field or area will normally be available. The addition of § 206.102(d) will permit necessary information on arm's-length sales to be obtained. In other situations, the benchmarks provide for use of spot sale prices, net-back, or any other reasonable method.

One industry commenter noted that most, if not all, posted prices are prices posted by a purchasing, marketing, or transporting entity, some of which may have producing lessee affiliates. "However, taken literally, there will not be a *lessee's* posted price."

MMS Response: MMS has added a new § 206.102(c)(6) which defines lessee, for purposes of this section, as including a designated purchasing agent.

One State commenter noted that proposed § 206.102(c)(1) fails to anticipate that a lessee could make purchases at different postings within the same reporting period and suggests that, in such a case, "the volume weighted average would seem to be appropriately specified, because it could be easily computed by the payor and would be less susceptible to manipulation by the payor."

MMS Response: The MMS concurs with this change and has included language to implement it in § 206.102(c)(1).

One Indian commenter stated that the use of this benchmark (contemporaneous posted prices) rather than the major portion analysis provided for in existing oil and gas regulations represents a breach of the Secretary's trust obligations.

MMS Response: The MMS believes that the regulations as adopted will permit the Secretary to discharge his/her responsibilities. Major-portion analysis will be used under the final regulations, where appropriate.

One industry commenter recommended that paragraph (c)(2) be modified by adding the phrase "known to the lessee" after the word "prices" so that the first part of the sentence would read, "The arithmetic average of contemporaneous posted prices, known to the lessee, used in arm's-length transactions * * *."

MMS Response: This suggestion was not adopted because it results in too great a degree of subjectivity.

One industry commenter supported the use of "arithmetic average" as a benchmark, but suggested that there should either be an agreement between the lessees and MMS as to which companies' postings are to be used, or that MMS publish a list of the companies whose postings may be used to calculate an arithmetic average. It pointed out that in the case of South Louisiana (used for offshore) there are at least one dozen companies that post oil prices and there could be price changes in one month on different dates by all of the companies.

MMS Response: The MMS may decide, upon request, on the basis of an individual case, to designate postings to be used in calculating an arithmetic average. It is not considered practical to do this continuously.

Three Indian commenters objected to the use of "arithmetic average" and recommended that a "weighted average" be used instead. Another commenter stated that use of "arithmetic average will not yield a true market value because the lessee is given the opportunity to manipulate prices by selling some oil at extremely depressed prices."

MMS Response: Paragraph (c)(2) requires consideration of postings of persons other than the lessee. Although the postings are available to the lessee and to MMS, volumes often are not. Thus, requiring a weight averaging of third party data is not practical.

To make this benchmark "more workable and administratively feasible" one industry commenter recommended using the average of all postings of the relevant type of oil in an area.

MMS Response: The MMS has found that postings do not always indicate a purchaser's willingness to buy. Therefore, any average which includes all postings may become skewed because of posted prices which are not market responsive. Pursuant to § 206.102(c) (1), (2), and (3), there must be significant quantities of oil sold before a posting or contract price can be averaged in.

One industry commenter recommended that paragraph (c)(3) be modified by adding the phrase "known to the lessee" after the word "contracts", and by replacing the phrase "area or nearby areas" with the phrase "field or area" for reasons of "clarification."

MMS Response: The addition of the phrase "known to the lessee" was not adopted because it would result in inserting too great a degree of subjectivity. The term "field or area" was not adopted because the intent is to utilize a larger area than "field or area" in reviewing arm's-length contract prices.

One State commenter stated that "Subparts (iii) and (iv) attempt to distinguish between arm's-length contracts and spot sales. But, there is no basis for saying arm's-length spot sales are not also arm's-length contracts under the definitions. Additionally, there is no requirement (and there should be) that only spot sales which are genuinely arm's-length should qualify as indicia of royalty value."

MMS Response: The MMS concurs that the spot sales used in the benchmark should be arm's-length spot sales and will insert the term "arm's-length" immediately preceding "spot sales" in the final rule, § 206.102(c)(4). With regard to the first comment, if a spot sale is for a significant quantity of oil, it could be considered under paragraph (c)(3).

Most of the 16 State and Indian commenters who opposed the benchmark system supported highest posted price with the use of a net-back method for verification of values used. One of the State commenters in describing MMS's proposed use of net-back in proposed § 206.102(c)(5) as too restrictive, made the following statements: "* * * the government would carry the burden of establishing that none of the preceding benchmarks can be applied before it would [be] authorized to use net-back * * * In effect, net-back will rarely, if ever, be used. At the same time it is the only method of valuation proposed by MMS that can be applied independently from lessee submitted documentation."

MMS Response: The MMS agrees that there will be infrequent use of the net-back method. It is believed, however, that the other benchmarks which have higher priority will result in a reasonable value for royalty purposes and obviate the need to undertake a labor-intensive net-back method. The MMS routinely will verify lessee-generated information used in applying the benchmarks during its monitoring process and through audit.

One State commenter articulated the viewpoint of a large number of other commenters by recommending an alternative method of valuation, namely use of the highest posted price paid or offered in the field or area with the net-back procedure used as verification or backup.

The commenter also stated that "* * * the approach we suggest—highest posted or a refined product value net-back—serves the twin goals of assuring the collection of fair market value and providing certainty to the lessee. Highest [price] posted or paid is more easily determined than the arm's-length nature of a contract, and a refined product value can be calculated by the lessee itself or provided by the government. It also is an approach that is independent of lessee generated information and thus meets Congress intent that independent methods of verification be employed. Gross proceeds would continue as the absolute minimum acceptable value."

MMS Response: The MMS believes that gross proceeds received under arm's-length contracts and posted prices used to purchase significant quantities of oil in arm's-length transactions generally represent the market value of oil and does not agree that it is necessary to perform a refined product net-back analysis to verify them.

One industry commenter expressed approval of the concept in proposed paragraph (e)(1) that prior MMS approval generally need not be obtained where value is determined pursuant to paragraph (c). One Indian commenter expressed concern that "once approval is granted, follow-up audits are unlikely", and recommended that "There should be provisions mandating routine MMS audits of valuation methods occurring at intervals not greater than one year." One industry commenter objected to the fact that MMS will not be giving prior approval stating that this subsection places "the burden—on the producer to prove the determination of value." One State commenter stated that the regulation should specify that the lessee retain "all data relevant to determination of royalty value," instead of "all available data to support its determination of value." That State commenter stated that the regulation should specify that MMS "will" order compliance when incorrect payments are discovered, rather than stating "MMS may direct a lessee to use a different value."

MMS Response: Although MMS will be making periodic audits, it is not appropriate to specify the scheduling, type, and timing of audits in these regulations. With regard to the second comment, the lessee is responsible to comply fully with the regulations by properly valuing the oil for royalty purposes in accord with the appropriate benchmark and to retain all relevant data. The MMS has adopted the suggestion that the phrase "all data relevant to determination of royalty value" be substituted for "all available data to support its determination of value" in § 206.102(e)(1). Also, the word

"will" has been substituted for the word "may" in the last sentence.

Section 206.102(f) was proposed as paragraph (e), and provides that lessees will pay additional royalties and interest if the lessees improperly determine value. One industry commenter recommended that any "retroactive valuation determinations" on the part of MMS "be limited to fraudulent and noncompliance situations." That commenter went on to suggest that if MMS determines that a lessee underpaid royalties, then the interest associated with those royalties should only accrue from the date of that determination until royalties are paid.

MMS Response: The lessee is responsible for properly determining value for royalty purposes in accordance with the lease terms, regulations, and appropriate instructions and court decisions. Accordingly, if royalty is underpaid, the lessee is responsible for the additional royalty due plus any interest from the time such payment(s) should have been made. MMS has adopted this section as it was proposed.

Another industry commenter agreed that underpayment of royalties was subject to interest, but recommended that MMS likewise should pay the lessee/payor any interest "statutorily authorized" on reimbursed credits or royalty offsets when royalty overpayments are discovered.

MMS Response: At this time MMS has no legal authority to pay interest on royalty overpayments.

Section 206.102(g) was proposed as paragraph (f), and prescribes a procedure for a lessee to request a value determination from MMS. It has been adopted as it was proposed with some minor modifications. Three industry commenters suggested that there be a time limit of 120 days for MMS valuation responses. One of these commenters also recommended that there be no penalties or accrual of interest for any underpayment of royalties during this period (which would not be known until after MMS's decision).

MMS Response: The MMS will make every effort to respond timely, but this is necessarily dependent upon available resources. MMS cannot agree to a regulatory time limit. Because the lessee is responsible for proper valuation, interest is assessed if the lessee makes an improper valuation. The MMS believes a lessee should be able to request a valuation determination at any time.

One commenter suggested that there should be opportunity for review of a value determination by the affected royalty recipient (State, Tribe, etc.) before a final decision is made because, without such review, the cooperative audit role is rendered meaningless.

MMS Response: The MMS does not consider it practical to require a review by a State or an Indian lessor when a value determination is made. The MMS will attempt to coordinate its value determinations with States doing audits under section 205 of FOGRMA and Indian Tribes doing audits under section 202 of FOGRMA. This does not make the cooperative audit role, in accordance with FOGRMA, less meaningful or effective.

One industry commenter recommended that the provision be clarified that an MMS rejection of a proposed valuation determination is appealable to either the Director or Interior Board of Land Appeals (IBLA).

MMS Response: This modification is not necessary because all MMS final orders or decisions arising from the regulations in Titles 25, 30, and 43 are appealable pursuant to 30 CFR Parts 243 and 290.

One Indian commenter recommended that lessors also should be able to request MMS determinations. They also recommended that the regulations should require MMS to notify Tribes/allottees of any changes in valuation determinations.

MMS Response: The regulations as adopted in § 206.102(g) do not provide a specific procedure for the Indian lessor to request a valuation determination from MMS. However, MMS always is available to discuss with Indian lessors any valuation issue regarding their leases.

One State commenter recommended that the third sentence be modified by adding the word "all" before "available data", and replacing "to support its proposal" with "relevant to the valuation of its production". Also, the phrase "subject to audit" should be added.

MMS Response: The MMS has made some of these changes for purposes of clarity and comprehensiveness.

Section 206.102(h) was proposed as paragraph (g). It provides that the value for royalty purposes cannot be less than the gross proceeds accruing to the lessee for lease production, less applicable allowances. Eight industry respondents considered the phrase "or which could accrue" objectionable and urged its deletion. The main reason given for their position is that the language creates uncertainty and subjectivity, contrary to MMS's stated objective of gaining certainty and precision in royalty accounting.

MMS Response: MMS has deleted the phrase "which could accrue" from the final rule. As explained above, with respect to § 206.102(b), MMS is satisfied that the term "accruing" includes all consideration to which the lessee is entitled pursuant to its contract, not just what it actually receives.

Two industry commenters suggested that some off-lease post production costs (such as those carried out on leases in "especially hostile or remote environments") and certain onlease post-production costs (such as those deemed to be "extraordinary" for onshore leases, the cost of submerged gathering lines, the cost of environmental compliance, and the cost of post-production facilities installed on leases in water depths greater than 400 feet for offshore leases) should be shared by the lessor and counted as deductions from royalty payments along with transportation allowances. One stated rationale for this suggestion is that some "post-production" costs enhance the value of the oil and, therefore, the costs should be shared by both lessee and lessor, as are the benefits. One commenter simply stated that the phrase "and other deductions" should be added to the "less applicable transportation allowances" language.

MMS Response: The MMS has modified § 206.102(h) to refer to deductions for any type of allowance, not just transportation allowances. As explained below, MMS has adopted a rule which would provide for deduction of certain extraordinary costs.

Three State commenters objected to the deduction of transportation allowances from value and particularly from the gross proceeds, especially if gross proceeds is considered a "minimum value." One of the commenters states that the "less transportation allowances" language is particularly confusing because "it suggests that lessees can deduct the allowance from the value determination" rather than as a separate line item as required by § 206.105(c)(4) of the final rule.

MMS Response: Section 206.102(a) provides that the value for royalty purposes is the value determined in accordance with § 206.102 (i.e., arm's-length gross proceeds or a value determined using benchmarks) less applicable allowances. The purpose of § 206.102(h) is to make it clear that no matter what valuation method is used, the value for royalty purposes cannot be less than the lessee's gross proceeds less applicable allowances. Therefore, if a benchmark derived value less applicable allowances is less than gross proceeds less applicable allowances, gross proceeds less applicable

allowances is to be used as the value for royalty purposes. In either event, the lessee may be entitled to deduct transportation allowances to determine value for royalty purposes at the lease (unless the benchmark derived value already is a value at the lease—in that event no further transportation allowance would be authorized).

Section 206.102(i) was proposed as paragraph (h). This section addresses the lessee's obligation to place lease production in marketable condition. Five industry commenters opposed the concept that the lessee is responsible for placing the product in marketable condition at no cost to the lessor and recommended specific deletion of language in the proposed regulation to accomplish this. One industry commenter recommended that the language "unless otherwise provided in the lease agreement" be added at the end of the first sentence, and another industry commenter pointed out that the lessor does share in marketable condition costs under net-profit-share leases.

MMS Response: Historically, MMS's policy and practice is that the lessee generally is responsible for placing the lease product in marketable condition at no cost to the lessor. This practice has been upheld by court decision. The MMS has adopted the suggestion that the language "unless otherwise provided in the lease agreement" be added at the end of the first sentence because there are a few leases in which the lessor shares in such costs. Also, as noted earlier, MMS received many comments that so-called post-production costs should be allowed as a deduction in determining value for royalty purposes. Generally, these costs are not allowed as a deduction because they are necessary to make production marketable. However, MMS has considered carefully all of the comments on this issue and decided that there may be certain circumstances where some extraordinary costs for gathering, desulfurization, or storage should be allowed as a deduction. Such allowances will be authorized on individual cases only upon application to the MMS. A new § 206.102(i)(2) has been added which establishes a two-part test for qualification for a cost allowance. First, only production from leases in unusually high-cost or frontier areas qualify. The only leases that qualify are those located north of the Arctic Circle or those OCS leases located in water depths in excess of 400 meters. Any leases that do not meet this first test cannot apply for this allowance. However, even for leases that meet this test, MMS will not grant an allowance unless the lessee demonstrates to MMS's satisfaction that the costs are, by reference to standard industry conditions and practice, deemed to be extraordinary, unusual, or unconventional. In some instances, MMS may grant an allowance only to the extent that the extraordinary costs exceed conventional costs for the same operation.

Section 206.102(j) was proposed as paragraph (i). There were 13 commenters on this section—10 industry, 2 State, and 1 Indian. The majority of the comments were negative in some respect; only two commenters (one industry and one State) concurred with the proposed regulation as written. One State and four industry commenters recommended deleting the regulation in its entirety, indicating that the regulation is inappropriate in the context of oil sales because the majority of oil is sold under monthly posted prices and is not normally subject to contractual price escalations or increments. They suggested that the regulation is more appropriate to gas sales contracts and does not belong as an oil valuation standard.

MMS Response: Although the large majority of oil is sold under posted price bulletins, the division order, which sets forth the division of proceeds and is signed by all interest owners, is considered to constitute the "contract" for purposes of these regulations.

Several modifications, many taking issue with the "prudent operator" concept, were suggested as follows:

Two industry commenters suggested deleting the first sentence ("Value shall be based on the highest price a prudent operator can receive under its contract") because: (1) It countermands the use of the actual proceeds benchmark system established in § 206.102 (b) and (c); and (2) the requirement of a lessee to obtain the highest theoretical price, regardless of the cost involved in obtaining that price, may contradict the definition of "prudent operator" found in the draft coal regulations at § 206.5(nn) and, therefore, ignores "the realities of the marketplace and the courthouse and unfairly precludes the lessee from exercising sound business judgment."

One industry commenter recommended revising the paragraph to conform to the reasonable value standard of § 206.102 generally. Here the commenter argued that the "highest price" standard of this subsection is in direct opposition to the reasonable value standards of previous subsections, thus causing the proposed rulemaking to be contradictory.

MMS Response: The MMS has modified the first sentence of the final rule to read "Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract." As noted in the preamble to the proposed rule, this section prescribes a diligence concept. As discussed above with regard to the concept of gross proceeds "accruing" to a lessee, MMS requires a lessee to pay royalty on that value which he/she was entitled to get. These regulations reflect MMS's willingness generally to accept arm's-length contract prices as value, but there is a concomitant obligation on the part of the lessee to obtain all to which the lessee is entitled under its contract. If it fails to take such reasonable measures, MMS will assess royalty on the prices which reasonably could have been obtained in accordance with the contract.

One industry commenter suggested changing the fourth sentence to read "the lessee will owe no additional royalty *unless or* until monies are * * * received" in cases of disputed payments.

MMS Response: The MMS has adopted this suggested modification as consistent with its intent. However, this provision does not permit a lessee to avoid paying royalties where a purchaser has failed to pay, in whole or in part or timely, for a quantity of oil.

One State respondent suggested that an explicit provision for the assessment of interest for delayed payments should be added, with such a requirement being an equitable compromise for the lessor's agreement to delay enforcement of its rights to the timely payment of full royalties.

MMS Response: When a matter is being legally contested between the parties, and the lessee has taken appropriate legal action, MMS's policy is not to require payment of the amount in dispute until the lessee actually receives it. If a purchaser fails completely to pay for a volume of production, royalties still are due the month following the month of sale or other disposition. In all cases, interest is due if the royalties are paid late. However, in the case of disputed price increments, the royalties are not due until the end of the month following the month that the lessee receives them.

An Indian commenter also suggested that the last sentence should be clarified to make explicit that the bankruptcy of a purchaser of oil should not permit a lessee to avoid its royalty payment obligation.

MMS Response: The MMS believes that the language already encompasses

a bankruptcy situation and recognizes that the lessee still has an obligation to pay its royalties.

Section 206.102(l) was proposed as paragraph (j). Comments were received from three States and six Indian representatives objecting to the restrictive terms/effect of this paragraph. In general, the comments pointed out that the requirement to obtain valuation information through Freedom of Information Act (FOIA) requests would inhibit Indian Tribes, allottees, and States from gaining access to the information required to assure that valuations are properly determined. In particular, "The second sentence of the proposed regulation appears to be an unlawful effort to preclude the exercise of departmental discretion under FOIA to voluntarily release nonproprietary data to royalty owners on a case-by-case basis. The third sentence appears to prohibit tribes and allottees from requesting such information through the BIA." It was generally recommended that the paragraph should be clarified to indicate that all valuation information should be available to States, Indian Tribes, and allottees without going through FOIA procedures. (Two Indian commenters offered specific language that could be appended to the paragraph to clarify its intent regarding the sharing of information with authorized parties.)

MMS Response: The intent of this paragraph was not to preclude access allowed by law, but rather to ensure the lessee that disclosure of proprietary information is in accordance with established procedures. There are restrictions on providing certain types of information to persons outside the Department of the Interior, and MMS must act in accordance with those limitations. States and Indians with FOGRMA delegations and cooperative agreements will have broader access to information which otherwise could not be released. This section is not intended to limit in any manner an Indian lessor s right to obtain information directly from the lessor or from MMS to the extent provided in lease terms or applicable law.

Section 206.103 Point of royalty settlement.

Twelve industry representatives and two States commented on this section. The two State commenters recommended that § 206.103 be strengthened by defining standards for establishing the point of royalty settlement and thereby minimizing pipeline losses. Lease or unit boundaries were suggested as the point of royalty settlement for onshore production, and the entrance to the first onshore facility was suggested for OCS production.

MMS Response: These regulations pertain to the valuation of oil and are not concerned with the criteria for the point of royalty settlement. The point of royalty settlement is authorized by MMS operations offices for Federal OCS leases and by BLM for onshore Federal and Indian leases.

Two industry commenters addressed the clarity and intent of § 206.103(a)(2). One of these commenters pointed out that the reference to an adjustment for differences in quality and quantity (such as for basic sediment and water) was unclear, asking what adjustments would apply and how these would be made. The other commenter recommended deleting the paragraph altogether because only the quantity and quality actually measured at the point of royalty settlement should be used for royalty computations.

MMS Response: The paragraph cannot be deleted because there are situations, usually onshore, where the gross proceeds accruing to a lessee are based upon the quantity and quality of oil at a point that is different than the point of royalty settlement specified by BLM to be used in calculating Federal or Indian royalty, usually at the tank battery on the lease. In this situation, the quantity and quality criteria measured at the tank battery on the lease must be used to determine the proper value, which, because the quantity of oil at the contractual sales point is less, will be greater than the lessee's gross proceeds.

Ten commenters from industry objected to the provision of § 206.103(b) disallowing actual or theoretical losses between the point of royalty settlement and the actual delivery point. They pointed out that pipeline losses are an integral part of transportation over which the lessees/operators have no control and thus should be an allowable component of transportation deductions. They also pointed out that disallowance of losses is contrary to the concept of accepting gross proceeds under arm's-length transactions because the lessor's royalty may be calculated on a different basis than what the lessee is paid by the purchaser.

MMS Response: The issue addressed here deals with volume and quality measurements upon which royalty must be based. The issue of line losses being included as a component of transportation deductions is addressed in the section of the regulations dealing with transportation (§§ 206.104 and 206.105).

One industry commenter suggested that § 206.103(b) be clarified regarding load oil, and recommended that the section be modified to specifically exclude load oil from royalty obligation.

MMS Response: The determination of whether load oil is considered to be royalty bearing is a function of lease terms and the origin of the oil so used, and is generally the responsibility of the BLM and MMS OCS operations personnel for onshore and OCS leases, respectively. As such, no specific language was added to address this issue.

Section 206.104 Transportation allowances—general.

Comments on transportation allowances that did not relate to any specific section of the regulations were classified in the General section of the oil transportation regulations. Although there were comments on a wide variety of subjects, they have been grouped as follows: post-production costs, validity issues, adequacy/inadequacy issues, cost issues, Royalty-In-Kind (RIK) issues, and issues relating to the definition of terms.

Many commenters addressed the issue of whether MMS should allow lessees to deduct all post-production costs from royalty payments. Transportation costs are one type of post-production cost. MMS will not respond to that issue again in this section as it was fully addressed in the discussion of § 206.102(i). Moreover, because the final rules provide an allowance for transportation costs, it is unnecessary to consider whether such costs also are to be considered "post-production costs."

Many commenters addressed the validity of any transportation allowances whatsoever and proposed that MMS should not consider transportation allowances as valid deductions from royalty computations, or only consider such allowances if transportation is necessary for lease development or results in a higher royalty.

Six State and five Indian commenters stated that transportation allowances should not be granted unless necessary to sell the product or to promote development, or unless the transportation results in a higher royalty value. Six Indian and one State commenter stated that MMS should not grant any transportation allowances under any circumstances.

One Indian commenter stated that the regulations should not be allowed to change the lease terms. According to this commenter, the granting of

transportation allowances is, in effect, a change to the lease terms.

Two Indian commenters stated that MMS must take into account its responsibility to Tribes and allottees in preparing the regulations and must determine the fairness and reasonableness of all transportation allowances.

One industry commenter stated that the reason that MMS grants allowances is because certain Interior Board of Land Appeals (IBLA) decisions required that transportation be considered when determining product value on which royalty is based. Another industry commenter stated that MMS should grant a transportation allowance even if the product value is determined at the lease, if the sales contract required the lessee to incur the expense of transporting the oil to the point of sale.

MMS Response: On the basis of decisions by the Interior Board of Land Appeals (IBLA), Solicitor's opinions, and judicial decisions, it has been longstanding MMS policy to grant transportation allowances when oil is transported to a sales point off the lease. Furthermore, the IBLA has ruled that transportation allowances must be granted for Indian leases.

Kerr-McGee Corp., 22 IBLA 124 (1975). Therefore, the regulations being adopted are consistent with past practice and are consistent with the Secretary's responsibility to the Indians. The MMS believes that royalty should be free of production and marketing costs. However, values may have to be adjusted for transportation and/or processing in determining value at the lease.

The MMS agrees that the proposed procedure for determining a transportation allowance places a great deal of reliance on the oil industry. However, this program will be under continuous review and oversight by MMS. There is nothing in the final oil transportation allowance regulations that would change the terms of any Indian lease. The MMS believes that the policy of granting transportation allowances is appropriate and should continue.

Another issue centered around the adequacy or inadequacy of the proposed oil transportation regulations in general. Some commenters believed that the regulations are completely flawed, while others pointed to specific instances where changes should be made to improve their specific applicability.

One industry commenter suggested that MMS should approve the use of contract prices which are net of transportation costs. Another industry commenter stated that the regulations should be revised to eliminate the alleged bias against frontier and deep-water areas. They also recommended the elimination of the ceiling on transportation allowances. Another industry commenter stated that the regulations should be modified to embrace both traditional and nontraditional transportation arrangements.

Two industry commenters stated that in their view the proposed regulations serve as a disincentive for companies to build and operate transportation facilities. One industry commenter stated that the oil transportation regulations should be revised to achieve certainty by adopting a more rational and realistic approach.

MMS Response: In response to comments received, MMS has changed the regulations to recognize that in arm's-length situations where the specified price is reduced by a transportation factor the lessee does not have to report the transportation factor as a transportation allowance. The MMS also recognizes that transportation costs for frontier and deep-water areas may be extraordinarily high and may exceed 50 percent of the value of oil. Because of this concern, MMS has adopted a provision in the final regulations to permit the transportation allowance to exceed the 50-percent limitation with approval from MMS. As the general rule, however, the transportation allowance authorized by the regulations may not exceed 50 percent of the value of the oil at the point of sale on the basis of a selling arrangement. The MMS has decided that pre-approval of all transportation allowances is not a cost-effective procedure. The 50-percent threshold merely gives MMS the ability to monitor more closely the situation where the allowance, based on reasonable actual costs, will exceed that limit.

The MMS received a number of comments relating to transportation allowances for royalty-in-kind oil. Eight industry commenters stated that MMS should grant a transportation allowance for onshore royalty-in-kind oil. Another industry commenter suggested that the regulations should clearly state that the lessee is not required to transport royalty-in-kind oil from the lease. Three industry commenters stated that this subsection was in conflict with section 208.8 of the proposed RIK regulations.

MMS Response: The suggestion that MMS should grant a transportation allowance for onshore royalty-in-kind oil was not adopted because the onshore lease terms provide that the in-kind oil will be made available to the lessor on the lease at no cost to the lessor. The MMS believes that there is no need to state explicitly that the lessee is not required to transport onshore royalty-in-kind oil. Many of these issues will be addressed in MMS's revisions to the RIK regulations (See 52 FR 2202, January 20, 1987).

Another issue discussed by several commenters concerns the definition of terms used in the regulations. Four respondents commented on the use of the term "reasonable" to describe transportation costs. One State commenter recommended that the term "reasonable" was too vague and should be defined. Three industry commenters recommended that the term "reasonable" be deleted. Six commenters were concerned about the term "remote from the lease." Two Indian and two State respondents commented that the phrase "remote from the lease" should be defined. Two industry commenters stated that the phrase "remote from the lease" should be changed to "the first available market."

MMS Response: The term "reasonable" is defined by the Merriam-Webster New Collegiate Dictionary as "moderate, fair." The MMS intends that this same definition apply in the determination of a transportation allowance and includes the requirement that the transportation costs be necessary to market the oil. The MMS agrees that the phrase "remote from the lease" caused confusion and has replaced it with the phrase "off the lease."

The MMS received comments from 33 respondents on § 206.104(b). This proposed regulation established a 50-percent limit on transportation allowances.

Most of the comments on this paragraph related to one major topic, the limitation of 50 percent on oil transportation allowances. Comments were also received on the proposal not to allow royalty payments to be reduced to zero. Comments on the 50-percent allowance issue were also divided between those commenters who wanted to retain the limit and add additional qualifications, those who wanted to raise the limit, and those who wanted to lower the limit.

Seventeen industry commenters stated that MMS should abolish the 50-percent limitation for one or more of the following reasons: If the proposed limit is retained, the exception to the 50-percent limitation may not be exercised freely enough; the 50-percent limit could impose a serious economic deterrent to the exploration and development of frontier areas and could serve as a

disincentive to the building of transportation systems; the limitation figure is strictly arbitrary and totally unjust to the lessee/working interest owners; it would be a rare case when an oil transportation cost would come close to the proposed 50 percent cap, much less exceed it; the proposed 50-percent cap is a deviation from the stated intent of MMS to base royalty valuation on "gross proceeds."

Twelve industry commenters stated that MMS should approve requests for transportation allowances exceeding the 50-percent limitation upon submission of adequate documentation by the lessee for the following reason: If the actual cost of transportation can be reasonably justified, it should be permitted if a lessee can adequately demonstrate that a higher allowance is in the best interest of the lessor.

One Indian commenter stated MMS should change the 50-percent limitation to a 20-percent limitation because the 50-percent limit is excessively high.

Twelve industry and one State commenter stated that MMS should clarify the exception criteria which would allow transportation allowances to exceed the 50-percent limitation. The proposed "best interest of the lessor" criteria was described as vague and unclear and could be interpreted to exclude all cases. Criteria for approval should allow a lessee to more objectively plan development of oil and gas prospects.

Eight industry respondents stated that MMS should allow lessees to carry forward transportation costs otherwise allowable (except for the 50-percent limitation) from the current year to subsequent years. This procedure should be applied to all transportation systems, but it would be especially important in the frontier areas.

Two State, one State/Tribal association, and one industry commenter stated that MMS should retain the 50-percent limitation in the proposed regulations for the following reasons: The limit should apply in all cases with no distinction made between circumstances where transportation is a component of price and where transportation costs are incurred directly by the lessee; the 50-percent limit is acceptable as a guideline but MMS should freely exercise its authority to allow transportation costs in excess of 50 percent of the value of the lease product; the 50-percent limitation provides incentive to keep costs under control while allowing some relief for legitimate hardship conditions.

One industry respondent and one State commenter stated that royalty payments should not be reduced to zero. The State respondent commented that it is a privilege to use public lands and it should not be possible to take production from it royalty-free. Two industry respondents stated that royalty payments should be allowed to go to zero for marginal production and for cases where reservoir maintenance is a concern.

MMS Response: The MMS has decided generally that the 50-percent limitation should be retained in the final rule. The transportation allowance for oil is limited to 50 percent of the value of the oil on the basis of a selling arrangement. A lessee may request, and MMS may approve, a transportation allowance in excess of 50 percent if the lessee demonstrates that the costs incurred were reasonable, actual, and necessary. In no event, however, can the transportation allowance exceed 100 percent of the value of the oil.

The MMS received a total of seven comments from industry on § 206.104(c) which requires allocation of transportation costs among all products transported. One commenter stated that for transportation allowances, MMS should allocate costs on the basis of relative-value rather than on the basis of relative-volume. Two commenters recommended that costs associated with the transportation of nonroyalty-bearing products (i.e., water) should be deductible. It was also stated that to the extent transportation for certain nonroyalty-bearing products cannot be avoided, the costs should be equally as deductible as the oil transportation. Four commenters recommended deleting the requirement that transportation costs must be allocated among all products for one or more of the following reasons: Allocation would be a labor-intensive process and an onerous burden inflicted upon reporting parties; allocation would be impractical because in many instances volumes are not available; and it would require significant additional effort to complete additional Forms MMS-4110.

MMS Response: The MMS has considered the comments regarding allocating costs on the basis of relative-value. The MMS does not agree with the proposal that nonroyalty-bearing substances should have a transportation allowance. The MMS is aware that the allocation of transportation costs in situations where more than one product is involved could be burdensome. However, it is MMS's experience that the allocation requirement would not be difficult in most instances. Accordingly, MMS has retained the cost allocation on the basis of relative-volume in the regulations. Section 206.104(d) has been retained in the final rule in the same form as proposed.

Section 206.105 Determination of transportation allowances.

The MMS received 28 separate comments on these regulations.

Although there were comments on a wide variety of subjects, they have been grouped under nine issues as follows: acceptance of FERC-approved tariffs and arm's-length transportation agreements, excessive penalty and retroactive approvals, MMS's approval of the transportation allowances, acceptance of transportation reduced prices, status of currently approved allowances, required filing every 12 months, allowance on nonroyalty-bearing production, allocation of transportation costs, and period for filing a proposed allocation method.

1. Acceptance of FERC-approved tariffs and arm's-length transportation agreements as an accurate indicator of reasonable, actual costs.

Five industry commenters responded that the oil transportation allowance regulations should be written to support the use of FERC-101 approved tariffs and arm's-length transportation agreements as an accurate indicator of reasonable, actual costs.

Two Indian commenters expressed serious concern about the validity of using arm's-length contracts as an indicator of value. One Indian commenter stated that arm's-length contracts are not a bona fide indicator of reasonable, actual costs. Another Indian commenter expressed doubt that there can even be an arm's-length contract between companies in the oil industry. One Indian commenter stated that arm's-length contracts should not be accepted unless a thorough analysis of lessee/purchaser affiliations is undertaken. Another Indian respondent expressed considerable doubt that the criteria used by MMS would assure that an arm's-length contract is present in any given case. An Indian commenter also stated that MMS should establish appropriate criteria to determine the accuracy and reasonableness of allowances granted under arm's-length and non-arm's-length contract situations.

MMS Response: The MMS currently uses FERC-approved tariffs and arm's-length transportation agreements as an accurate indicator of reasonable, actual costs. However, for non-arm's-length and no-contract situations, MMS generally will permit only the reasonable actual expenses incurred by the lessee as the allowance. MMS is creating a limited exception to this

policy, discussed below, in regard to § 206.105(b).

2. The disallowance of a transportation deduction for a reporting period not covered by a Form MMS–4110, Oil Transportation Allowance Report.

The MMS received responses from 14 industry respondents stating that the disallowance of a transportation deduction for a reporting period not covered by a Form MMS–4110 is an excessive penalty for what they consider to be a minor infraction of the rules. The point was also made that the lessee does not always have the data to timely file a Form MMS–4110 before the Form MMS–2014 is filed. However, one State commenter agreed with the proposed regulation disallowing the deduction for any period in which the Form MMS–4110 was not received.

Fourteen industry commenters responded on this paragraph stating that the regulations should have a provision allowing retroactive transportation deductions. The general consensus was that a lessee does not always have the details on transportation worked out before production begins, and sometimes it is necessary to go back and revise data related to an allowance after agreements are reached because of the fast changing nature of current oil and gas markets.

MMS Response: The MMS considered the comments on retroactive requests and has revised the regulations, § 206.105 (a)(1) and (b)(1), to allow lessees to request transportation allowances retroactively for a period of not more than 3 months. Pursuant to § 206.105(d), if a lessee takes a deduction without complying with the regulations, interest only must be paid until the date that appropriate forms are filed. However, the lessee will be required to repay the amount of any deduction disallowed owing to the limitation on retroactivity.

3. Prior MMS approval of transportation allowances.

Six industry respondents expressed approval of the self-implementing procedure in the transportation allowance regulations. This was regarded as a method of relieving a considerable administrative burden on both industry and MMS. One Indian commenter disagreed with the self-implementing nature of the regulations because it was regarded as a method of establishing the 50-percent limitation as a floor for transportation allowances.

One State and one Indian commenter stated that MMS should pre-approve all transportation allowances and should provide approval only on a showing of necessity to promote development or a showing that a higher value could be obtained for the oil at a point of sale away from the lease. It was also stated that neither the MMS nor the States and Indian Tribes have the resources to audit all leases and if these allowances are not monitored "up front" they will never be audited.

MMS Response: The MMS has determined that it is not necessary to pre-approve all transportation allowances. The MMS will monitor and review transportation allowances for regulatory compliance and reasonableness. Therefore, most allowances under § 206.105 (a) and (b) do not require prior MMS approval.

4. Acceptance of transportation-reduced prices without requiring the filing of Form MMS–4110 for both arm's-length and non-arm's-length situations.

Six industry commenters responded that MMS should accept transportation-reduced prices without requiring the filing of Form MMS–4110 for both arm's-length and non-arm's-length situations. This policy was regarded as reducing the administrative burden on industry and MMS. However, one commenter disagreed with this proposal because it was regarded as a potential technique to exceed the 50-percent limitation provision of the regulation. One commenter stated that neither industry nor MMS could administer trucking rate transportation allowances on the basis of lease-by-lease and, therefore, MMS will probably be forced to accept transportation-reduced values where trucking is involved.

MMS Response: The MMS considered these comments and determined that § 206.105(a)(5) of the final rule should provide that transportation factors specified in arm's-length contracts are to be considered as reductions in value rather than transportation allowances. The use of Form MMS–4110 for the transportation factors is not required.

5. Should current approved transportation allowances remain in effect until they expire?

Two industry commenters responded that it would be administratively easier if the regulations would allow a current approved transportation allowance to remain in effect until it expires. Seven industry commenters stated that the transportation allowance reported on Form MMS–4110 should continue until the applicable contract or rate terminates or is modified or amended.

MMS Response: The MMS considered these comments and has revised the regulations at § 206.105 (c)(1)(v) and (c)(2)(v) to provide that transportation allowances in effect at the time these regulations become effective will be allowed to continue until they terminate, subject to audit.

6. Should MMS require the filing of Form MMS–4110 every 12 months?

Seven industry commenters stated that there is no benefit to MMS in submitting a form that duplicates information on file when a change has not occurred. Two industry commenters responded that there is no apparent reason for MMS requiring the filing of Form MMS–4110 every 12 months.

MMS Response: The MMS requires the filing of Form MMS–4110 on an annual basis for use in monitoring costs and volumes associated with a multi-million dollar transportation allowance program. The regulation is being adopted as proposed.

7. Should MMS allow transportation allowances for production which is not royalty bearing?

One industry commenter recommended that a transportation allowance should include costs associated with moving water because some water is retained in pipeline oil. Another industry respondent recommended deletion of the last sentences of § 206.105 (a)(2) and (b)(3) which prohibit disallowances for transporting lease production which is not royalty bearing.

MMS Response: It has never been MMS's policy to permit transportation allowances for production which is not royalty bearing. Historically, MMS's policy and practice has been to limit transportation allowance deductions only to the royalty-bearing portion of lease production transported.

8. Allocation of a cost applicable to more than one product.

Two industry commenters stated that allocation of costs presents a burdensome administrative task, but if allocation of costs is deemed necessary, it should be allocated on the basis of relative value rather than on the basis of relative volume. One industry commenter suggested MMS provide an alternative allocation procedure for situations which would require a variance from the proposed allocation method.

One State commenter suggested that MMS provide guidance on what will be an acceptable method of allocation in situations that involve the transportation of both gaseous and liquid products. One industry commenter suggested that the rules could be further enhanced by allowing for the adoption of an allocation procedure contained in a different arm's-length transportation contract where similar conditions and products exist.

MMS Response: The MMS determined that allocating costs on the basis of relative volume rather than on the basis of relative value is more equitable because of the wide variance in relative value between some products. The MMS will allow the lessee to propose an allocation procedure. It would be difficult for MMS to provide guidance on acceptable methods of allocation because of the many different situations involving the transportation of both gaseous and liquid products. The MMS believes that the most advantageous procedure is to have the lessee submit an allocation proposal to MMS in these situations. Thus, § 206.105 (a)(3) and (b)(4) require the lessee to submit such an allocation proposal within prescribed timeframes.

9. The MMS should extend the period to submit a proposed allocation method.

Two commenters stated that the requirement to submit a proposed allocation method within 60 days will create a significant workload and burden, and a more reasonable provision of time would be 120 days.

MMS Response: The MMS determined that 3 months is a reasonable time period to submit a proposed allocation method and § 206.105 (a)(3) and (b)(4) have been revised accordingly.

The MMS received comments from 26 commenters on § 206.105(b) which applies to non-arm's-length or no contract transportation situations—17 from industry, 6 from industry trade groups, 1 from a State association, 1 from an Indian Tribe, and 1 from a Federal agency. Most of the negative comments actually addressed § 206.104(a), and those comments generally expressed the belief that no transportation allowance of any kind should be granted by MMS.

The comments received on these paragraphs have been grouped into nine issues as follows: Acceptance of State or FERC tariffs, acceptance of comparable arm's-length contracts, use of a benchmark system, penalties, increase in estimated allowances, prior approval of allowances, allowable costs, rate of return, and retaining Alternatives 1 and 2 for return on capital.

1. Should MMS accept published State or FERC tariffs instead of using actual costs as the basis for approving transportation allowances?

Thirteen industry commenters stated that MMS should accept published State or FERC tariffs as the transportation allowance in non-arm's-length and no-contract situations. These commenters believed that MMS should "rightfully rely on the expertise of FERC and State agencies which set pipeline tariffs to determine fair and reasonable transportation charges." It was also stated that if MMS does not rely on FERC and/or State tariffs, there would be a wasteful duplication of effort between FERC, State agencies, and MMS. One industry commenter stated that FERC tariffs should be accepted as an allowable deduction regardless of whether the transportation contract is arm's-length or non-arm's-length because the tariff represents the recognized value of the service.

One industry commenter stated that MMS should accept as a transportation allowance either a FERC tariff or the actual cost including a reasonable profit, whichever is higher. This would give the lessee an option that would be more fair than the single method prescribed by MMS.

Two industry commenters stated that MMS should require actual costs only when there was no pipeline or published tariff. The use of internal cost accounting to determine the value of a transportation allowance was believed to be at odds with the interests of the lessee.

MMS Response: The MMS has reviewed the FERC procedure for granting tariffs. After careful consideration, MMS has decided that in most instances, for non-arm's-length or no contract situations, the fairest and best way to determine transportation allowances is to allow actual, reasonable costs plus, if appropriate, an acceptable cost for the lessee's undepreciated capital equipment. The MMS will recognize FERC tariffs as a valid cost in computing a transportation allowance only when it is an actual out-of-pocket expense pursuant to an arm's-length transportation contract. Existence of a FERC-approved tariff for a transportation system, however, is one of the requisite criteria for MMS to consider in granting an exception to the requirement to use actual costs for non-arm's-length or no contract situations. See discussion below.

2. Should MMS accept comparable arm's-length contracts for determining transportation allowances?

Nine industry respondents stated that MMS should accept comparable arm's-length contract costs as the transportation allowance. The costs incurred under comparable arm's-length contracts were described as the best indicator of the value of that service provided by the lessee in transporting oil to a market or to any other point where it could be sold.

MMS Response: It is MMS's past and present practice to allow only those costs which are directly related to the transportation of lease production. Costs incurred under "comparable arm's-length contracts" may include costs such as Federal and State income taxes, socioeconomic costs incurred by the lessee in order to obtain State or county land access such as the construction of schools or city sewer facilities. The MMS considered these comments in revising the regulations and decided that it was in the best interests of the Government, States, and Indians to base oil transportation allowances on actual, reasonable costs plus a return on investment.

However, in an effort to simplify procedures for both the lessee and MMS, the regulations at § 206.105(b)(5) will provide a limited exception to the requirement to use costs where the lessor's interest is adequately protected. The lessee must apply to the MMS for an exception from the requirement that it compute actual costs. The MMS may grant the exception only if: (1) The lessee has arm's-length contracts with other persons for transportation through the same transportation system; (2) the lessee has a FERC-approved tariff for the system; and (3) the persons purchasing transportation services from the lessee had a reasonable alternative to using the lessee's system (thus ensuring that the transportation contract price was not arrived at because the person requiring transportation had no choice but to accept the lessee's price). If the MMS grants the exception, then the lessee will use as its transportation allowance the volume-weighted average of the prices it charges other persons pursuant to arm's-length contracts.

3. Should the transportation allowance be based on the market value of transportation service as determined under a benchmark system?

Twenty-five industry respondents stated that MMS should allow transportation deductions based on a benchmark system. These commenters suggested that MMS allow the lessee the market value of the transportation service on the basis of a benchmark system featuring arm's-length contracts and tariffs with cost accounting being used only as a last resort.

MMS Response: The MMS considered the benchmark valuation system featuring arm's-length contracts and FERC tariffs with cost accounting being used as a last resort. The MMS has not adopted this recommendation for the same reasons as cited in Issue No. 2 above.

4. Should a penalty be imposed for late submission of the Form MMS-4110?

One industry respondent commented that requiring lessees to file Forms MMS-4110 and MMS-2014 at the same time would impose an unfair penalty on

lessees for being unable to complete Form MMS–4110 prior to the Form MMS–2014 reporting deadline and that there is no need to cancel all currently approved allowances. Two other industry commenters suggested that submittal of Form MMS–4110 be only on the basis of as-needed, pursuant to contract changes.

MMS Response: The MMS has reconsidered the reporting requirement that would deny the transportation allowance for those periods for which no Form MMS–4110 was filed. Pursuant to § 206.105(b)(1) of the final rules, a lessee may claim a transportation allowance retroactively for a period of 3 months from the first day of the month that the Form MMS–4110 is filed. However, if the lessee has taken an allowance before filing the form, it must pay interest from the date the allowance was taken until the form is filed. The lessee shall also be required to repay the amount of any allowance which is disallowed owing to the 3-month limitation on retroactivity * * *. See § 206.105(d). The proposal to retain all current allowances in effect until they expire was considered and it was decided that approved allowances in effect on the effective date of these rules will be allowed to continue in effect until they expire. See §§ 206.105(c)(1)(v) and 206.105(c)(2)(v).

5. Should the estimated rate reported on Form MMS–4110 be allowed to increase over the prior period, if justified?

One industry commenter requested that the estimated rate be allowed to increase over the prior period if justified. This respondent also recommended that the initial allowance be effective for a period greater or lesser than the 12 months to allow industry to convert to calendar-year reporting. This would ease the administrative burden. Another industry commenter questioned the cost effectiveness of the two-step submission of estimates and corrections. This commenter recommended that any adjustment, plus or minus, be made prospectively only.

MMS Response: The recommendation to allow an estimated rate to increase over the actual rate for the prior period, if justified, has been addressed in the final regulations. Pursuant to § 206.105(c)(2)(iii), the lessee may use an estimate higher or lower than the previous year's actual if the lessee believes it is appropriate when submitting Form MMS–4110. The recommendation to adjust the initial reporting period to allow industry to convert to a calendar year basis has been considered and the regulations at § 260.105(c) have been revised to provide for calendar-year reporting.

6. Should MMS require prior approval for allowances?

Two industry respondents commented that they were in support of the self-implementing feature of the regulations which would not require prior approval of each allowance by MMS before the allowance could be claimed. Two State commenters proposed that MMS should require prior approval on non-arm's-length contract or no-contract deductions for transportation because adequate audit resources are not available to audit the allowances, and it is very likely that many leases will never be audited. One Indian commenter proposed that MMS require prior approval and audit to prevent abuse in the claiming of depreciation and overhead costs.

MMS Response: The MMS currently reviews and approves all transportation allowance requests and has considered pre-approval and pre-audit of transportation allowances. It has been decided that a more effective use of resources can be attained by doing exception processing on allowances and selectively reviewing certain allowances in depth to determine the propriety of the allowance reported by lessees on Form MMS–4110. Therefore, with limited exceptions, no prior approval of allowances will be required.

7. Should costs other than reasonable actual costs be considered in calculating the transportation allowance?

Four industry respondents stated that MMS should revise the regulations to make an allowance for debt service and State and Federal income taxes. Three industry commenters recommended that MMS provide for a complete recovery of costs plus an acceptable profit for assuming the risks involved in undertaking the service function of transportation. One industry commenter recommended that MMS allow for administrative overhead beyond that which is directly associated with, or attributable to, the transportation system.

MMS Response: The MMS views income taxes to be an apportionment of profit rather than a valid operating expense. However, interest on money borrowed for operations would be considered as a valid operating expense. Interest on money borrowed to build a transportation facility is not considered allowable. A return on investment is given in lieu of interest on capital investments. The proposal to extend the amount of overhead beyond that which is directly allocable or attributable to transportation is not acceptable. Administrative overhead or any other costs not directly associated with transportation are not allowed.

8. What rate of return should be used to calculate return on depreciable investment?

Nineteen industry respondents opposed the use of Moody's Aaa corporate bond rate as unrealistic and too low. One industry commenter stated that "There is no reason to equate pipeline risks with the highest rated, most secure debt rate." Two industry commenters stated that the proposed rate is very conservative and arbitrary and the general consensus of the parties was that the rate of return should be adequate to reflect the risks involved in the oil and gas business. Seven respondents stated that the Aaa rate is the absolute lowest borrowing rate available only to a few "blue chip" companies.

One industry respondent suggested four alternatives to Moody's Aaa bond rate: (1) Prime rate plus 5 percent; (2) one and one-half times the average 20-year Treasury Bill rate; (3) 150 percent of Moody's Aaa rate; or (4) the rate of return methodology adopted by FERC in Opinion No. 154–B. This industry commenter also stated that industry's position supports a rate of return plus additional points to reflect risk factors, and two other industry commenters suggested that the rate of return should include Federal income tax.

Five industry respondents recommended a rate of return based upon the cost of debt and equity financing. One party stated that "Assets are not financed by debt alone; equity financing must be included in the calculation of an actual and reasonable cost of capital * * *" and suggested a rate to account for equity financing and an alternative method for extraordinary circumstances based on the weighted-average cost of capital. Another industry commenter suggested that the proposed rate "* * * would not include any return on equity which is a significant portion of the capitalization of the pipeline." One industry commenter suggested "* * * a true rate of return for the risk involved and the cost of capital for both debt and equity." Another respondent suggested a rate based on "* * * both cost of credit and equity capital." One industry respondent stated that "Most firms receive funds from both debt and equity sources."

Two industry commenters proposed the prime rate plus 5 percent in accordance with the RMAC panel. Two industry respondents suggested the average 20-year Treasury Bill rate times 150 percent. Seven industry commenters

recommended either the average 20-year Treasury Bill rate times 150 percent or the prime rate plus 5 percent as proposed by the Oil Valuation and Gas Valuation Panels, respectively. One industry respondent recommended the prime rate plus 7 percent. Another industry respondent suggested Moody's 20-year Baa rate plus 9 percent as an equitable rate of return. One industry commenter preferred the Treasury Bill rate times 150 percent if MMS fixes the rate at the time of initial investment or the prime rate plus 5 percent if MMS redetermines the rate yearly. Another industry respondent suggested a 23-percent pre-tax rate of return. One industry commenter suggested that a risk component of from 5 to 7 points above the Aaa rate be adopted.

Two industry commenters stated that the limitation on the rate of return serves as an economic disincentive for lessees to invest in high-risk ventures, such as the frontier areas. Three industry respondents commented that a lessee affiliated with the pipeline would be at a disadvantage under the proposed rate of return because it would not be competitive with other producers deducting a transportation allowance that includes risk factors.

MMS Response: The MMS has examined several options relating to rate of return and decided that a rate of return should be closely associated with the cost of money necessary to construct transportation facilities. The MMS has examined the use of the corporate bond rate very carefully and has concluded that such rates are representative of the loan rates on sums of money comparable to that expected for the construction of transportation facilities.

There is no doubt that there are some very high risks involved with some oil and gas ventures, such as wildcat drilling. However, the risk associated with building and developing a pipeline to move oil that has already been discovered is a much different risk. The risk of default (financial risk) is considered in corporate bond rates. Considering the risks related to transportation systems, a rate of return that is based on an applicable corporate bond rate would be appropriate for transportation systems.

The MMS has considered the prime rate, the prime rate plus 5 points, one and one-half times the average 20-year Treasury Bill rate, the Moody's bond rate, and Standard and Poor's bond rate. The rate of return used by FERC was not considered because MMS does not believe that the FERC's obligations in developing tariffs and those of MMS in developing transportation allowances are sufficiently similar to warrant the use of similar procedures.

The MMS believes that the use of an appropriate rate of return based on the corporate bond rate adequately considers the risk associated with a transportation system and that there is no rational basis for increasing a rate of return by arbitrarily adding percentage points simply to increase the allowance granted to a lessee. After carefully considering the comments and the options available, MMS determined that the rate of return should be based on Standard and Poor's BBB industrial bond rate. Section 206.105(b)(2)(v) has been revised accordingly in the final rule. However, because of the substantial and diverse comments on this issue, MMS intends in the near future to issue a notice of proposed rulemaking to reconsider the applicable rate of return for purposes of these regulations.

The MMS does not consider State and Federal income taxes as an appropriate expense that should be included in a transportation allowance and does not agree that the rate of return should be increased to allow for income tax liability.

9. Should MMS retain the provisions of both Alternative 1 and Alternative 2?

Four industry respondents commented that MMS should retain both Alternative 1 and Alternative 2 in proposed § 206.105(b)(5)(iv). One industry commenter recommended that both Alternatives 1 and 2 be included in any cost-based methodology for determination of a transportation allowance. Another industry commenter recommended that both alternatives be made available for use at the lessee's election on the basis of an individual transportation arrangement because adoption of this approach would assure the flexibility necessary to adapt to unforeseen changes in the business and transportation environments. Two industry respondents stated that MMS should retain Alternative 1. One industry commenter stated that it endorsed use of the first alternative because it gives lessees some latitude in choosing the depreciation method.

One industry respondent commented that MMS should not retain Alternative 2. The commenter stated that this alternative would encourage third parties to become involved in the pipeline business, in which case MMS would absorb the full market cost of transportation provided.

Four industry respondents commented that MMS should adopt Alternative 2 and apply it to all existing and future transportation facilities. One commenter stated that limiting Alternative 2 (return on initial capital investment) to new or newly acquired transportation systems is unsupported in the proposed rules and Alternative 2 should be available without the limitation imposed by the MMS. Two industry commenters stated that they presumed Alternative 2 has no limit on the deduction under this alternative. Both industry commenters stated that although Alternative 1 specifically states that a transportation system may be depreciated only once, there is no mention of such a cap on Alternative 2 and, therefore, it is presumed that this option has no limit. One industry commenter stated that it believed it was appropriate to include both Alternative 1 and Alternative 2 in any cost-based methodology for determination of a transportation allowance.

One industry respondent recommended that MMS permit the depreciation schedule to be adjusted to reflect additional capital investment of a subsequent purchaser because if additional capital is invested, there is no double recoupment of capital investment.

Six industry commenters stated that MMS's proposal to disallow recapitalization is inequitable. One commenter stated that because this proposal would only recognize the original capital costs, the additional capital costs which may have been invested by the new owner may not be recovered.

Two industry respondents stated that although they agreed with the concept of allowing a rate of return on the transportation facilities, the application of the allowance is unfair insofar as a company using Alternative 1 (i.e., one with existing facilities) would only be receiving a return on investment for the undepreciated investment (or net book value).

Two industry respondents stated that MMS should not tie the rate of return to a diminishing value. Both commenters stated that because the intention is to provide the lessee with a rate of return for his invested capital he should not be penalized by a diminishing return caused by tying the return into a depreciation option.

Five industry commenters stated that MMS should allow a lessee to add estimated abandonment costs to its depreciable capital investment value. One industry commenter stated that although MMS has set out that the proposed regulations require recognition of salvage values, often the cost of abandonment exceeds any salvage value; consequently, it was suggested

that the estimated cost of abandonment of the transportation system be included as an expense of operation to the lessee.

One industry commenter stated that a transportation system should be depreciated only once. The commenter suggested that the regulation state "A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership, a transportation system shall be depreciated only once."

MMS Response: The MMS has reviewed the comments received regarding both Alternative 1 and Alternative 2 in proposed § 206.105(b)(5)(iv) and concluded that both alternatives should be retained. However, under the final rule, § 206.105(b)(2)(iv), Alternative 2 can only be used for transportation facilities first placed in service after the effective date of these regulations.

The MMS has considered the issue of recapitalization and decided that it was appropriate for the Government to pay for the depreciation of a system only once.

The MMS has carefully considered the issue of basing the rate of return on the basis of a diminishing value and has decided that this procedure is consistent with longstanding Government policy on allowances and that MMS should continue this policy for transportation facilities in operation on the effective date of these regulations.

The MMS has taken the position that because it does not participate in the profit or losses that could result from the sale of transportation facilities, no costs for dismantling and abandonment should be included in transportation allowances.

The final rules provide that a transportation system may be depreciated only once, and that the depreciation schedule established by the original transporter/lessee may not be altered by a change in ownership.

The MMS received 19 comments from industry and 2 comments from Indians on the reporting requirements, § 206.105(c), in addition to the comments already discussed above. The two major issues of concern relating to the reporting requirements were: (1) Usage of Form MMS–4110, and (2) the terms of the allowance and reporting periods.

1. Should MMS require the filing of Form MMS–4110?

Six industry and one Indian commenter opposed the use of Form MMS–4110. One Indian commenter stated that there should be more monitoring of deductions taken from royalty and requested that MMS retain an approval process instead of the mere filing of Form MMS–4110. One industry commenter stated that Form MMS–2014 will show the transportation allowance taken and that Form MMS–4110 is unnecessary. Two industry commenters recommended the filing of an "Intent to Deduct Transportation." One industry commenter stated that the transportation costs under arm's-length contracts should be part of the value and Form MMS–4110 should be filed only for non-arm's-length transportation.

Five industry commenters stated that it would be burdensome to file a new Form MMS–4110 each time a trucking charge or similar net change occurred in a contract price. One industry commenter stated that price postings have been amended as often as three times per month. One industry commenter suggested that Addendum No. 15 be incorporated into the new regulations and expanded to include offshore leases. One industry commenter stated that the regulations are not clear whether a Form MMS–4110 must be filed for prices net of transportation. This industry commenter also stated that in some situations the lessee may not know a price is being netted of transportation in time to file Form MMS–4110.

One Indian commenter stated that the information on Form MMS–4110 should be clear and uncomplicated and should be available to the Indians.

MMS Response: The MMS believes that Form MMS–4110 must be required in order for MMS to monitor the transportation allowance program. The MMS believes it can effectively monitor the transportation allowance deductions without the pre-approval of the allowances. The MMS has made the information on Form MMS–4110 as clear and uncomplicated as possible considering the complex nature of transportation allowances. The information on these forms will be made available to the Indians upon proper request. The filing of a Form MMS–4110 equates to an "intent to deduct transportation." The transportation costs under an arm's-length contract are separate from the value determination under such a contract so a Form MMS–4110 should be filed for transportation costs determined under both arm's-length and non-arm's-length contracts.

In arm's-length situations where the purchaser is reducing the posted price for a transportation cost and the lessee is incurring no out-of-pocket expense, filing a Form MMS–4110 is unnecessary. In these situations, the point of sale is at the point the purchaser acquires the oil and because the reduction in price represents a cost incurred past the point of first sale, a transportation allowance would not be allowed by the regulations. However, in determining the value of the oil, the reduction of price for the transportation costs past the point of sale would be considered. Section 206.105(a)(5) of the final rule incorporates the necessary regulatory language.

2. Term of the allowance periods and the timetable for reporting.

One industry commenter endorsed the 12-month term for both onshore and offshore leases. Another industry commenter strongly suggested that all transportation allowances based on cost accounting be determined on the basis of calendar-year reporting. This industry respondent also suggested that all existing transportation allowances based on cost accounting be extended until April 1, 1988, when data for the 1987 allowance would be submitted.

Four other industry commenters opposed the termination of all current allowances and recommended continuing allowances in effect for a period of time beyond the effective date of the regulations to allow for smooth transition. The general consensus was that it would be an administrative burden to require the filing of Form MMS–4110 immediately upon passage of the rulemaking. In addition, two of these four industry respondents proposed that the transportation allowances remain in effect for an additional 90 days beyond the issuance date of the regulations. One of these commenters suggested filing new forms only when the current allowance expires.

One industry commenter recommended a grace period for filing all allowances. Another industry commenter proposed a 90-day filing period for new Forms MMS–4110 that are submitted for contract revisions.

MMS Response: The MMS concurs with a 12-month term and the final regulations in § 206.105(c) have been changed to provide that a Form MMS–4110 will be filed by calendar year. The MMS considered extending current allowances and § 206.105 (c)(1)(v) and (c)(2)(v) now provide that certain allowances will continue in effect until they expire. In regard to a grace period for filing, the regulations have been revised to allow a grace period of 3 months for all non-arm's-length and no-contract situations. The regulations in § 206.105(c)(2)(iii) allow the lessee 3 months after the end of the previous reporting period to file the Form MMS–4110. Also, the final regulations at § 206.105 (a)(1) and (b)(1) have been revised to allow for transportation allowances to be claimed retroactively

for a period of not more than 3 months prior to the first day of the month that Form MMS–4110 is filed with MMS. Therefore, even if the lessee is not able to file the Form MMS–4110 timely, the lessee could file the Form MMS–4110 and claim the transportation allowance on a corrected Form MMS–2014 at a later date.

Nine industry respondents commented on § 206.105(e), which was proposed as § 206.105(d), and pertains to adjustments. Four principal issues were identified.

1. Should MMS require retroactive adjustments to transportation allowances?

It was the general consensus in the comments that adjustments were a very large burden on both industry and the MMS and that some way should be found to eliminate the need for the many adjustments that result from differences between actual and estimated transportation allowances. Six industry commenters recommended that positive or negative differences between estimated and actual costs should be rolled forward into the transportation rate for the subsequent period because this would greatly relieve the administrative burden on MMS and industry. Three industry commenters recommended that actual data from one period be used as the allowance for the subsequent period, eliminating the need for adjustments. It was stated also that this procedure would relieve the burden on MMS and industry associated with the requirement to make adjustments to each account, each month, for each year.

MMS Response: To ease the burden resulting from the adjustments requirement, MMS has eliminated the need for many retroactive adjustments by accepting arm's-length-contract transportation costs when the lessee timely files the Form MMS–4110. For non-arm's-length and no-contract situations, MMS did not eliminate the need for adjustments between actual and estimated transportation allowances. The MMS considered alternatives such as (1) rolling forward differences into subsequent periods or (2) using actual data from one period to be used as the next period's actual allowance, but determined that either procedure could be inequitable to lessees, MMS, Indian Tribes, and Indian allottees.

2. Should MMS require refunds to be requested under the refund procedure requirement of section 10 of the Outer Continental Shelf (OCS) Lands Act?

One industry commenter stated that refunds for estimates tendered in excess of actual costs should not be judged as refunds of a payment of royalty under section 10 of the OCS Lands Act, 43 U.S.C. 1339, because estimates are not "actual" payments of royalty. Overpayments could then be treated as line-item adjustments not subject to the refund process. Two industry respondents emphasized that the requirement to submit written requests for refunds for under-deducted transportation costs in accordance with section 10 of the OCS Lands Act will be an extraordinarily difficult financial and reporting burden to industry and MMS. Two industry commenters stated that the current long review and audit process is now causing lessees to lose the time value of money in the refunds which are due the lessees under section 10 of the OCS Lands Act. Audits on such refunds were described as fruitless and wasteful and the suggestion was made that MMS should consider transportation allowance adjustments to be exceptions to the refund requirements of section 10 of the OCS Lands Act. Overpayments would be recovered through line-item adjustments on Form MMS–2014.

Two industry commenters suggested that the submission of Form MMS–4110 should constitute the tolling of the 2-year statute of limitations period defined in section 10 of the OCS Lands Act. These parties believed that this should be put in the regulations to avoid burdensome refund procedures.

MMS Response: It would not be proper for these rules to prescribe the refund procedures. MMS is examining the issue and will provide guidance to lessees.

3. Payment of interest.

Four industry commenters stated that the MMS-proposed procedure for handling interest payments was not fair. These commenters believed that if the lessee must pay any difference plus interest, MMS should also pay any difference plus any interest statutorily authorized.

MMS Response: MMS has no legal authority to pay interest.

The MMS received 17 industry comments on § 206.105(f), which was proposed as paragraph (e). All 17 commenters basically stated that MMS should amend or delete this paragraph to allow actual or theoretical losses as a transportation cost.

Nine industry respondents stated that line losses are actual transportation costs which should be allowed by MMS. The basic premise of these comments was that all costs resulting from line losses should be deductible because if MMS does not absorb its pro rata share of such transportation costs, an inequity results.

As a variation of this issue, eight industry commenters declared that only certain oil losses should be deductible from royalty. Five industry respondents commented that line losses in arm's-length contracts and FERC tariffs should be allowed. One of these commenters stated that if a loss provision is a part of an arm's-length contract or a FERC tariff, MMS should accept such a provision, just as it accepts the dollars-and-cents rates in the contract or tariff. In other words, the losses are part of the total cost of the transportation arrangement and should be deductible. Three industry commenters stated that MMS should allow those line losses not attributable to negligence. One of these commenters stated that a credit should be allowed for line losses not attributable to negligence and such change would conform to section 308 of the FOGRMA which specifies that a lessee is liable for royalty payments on oil and gas lost or wasted from a lease site when such loss or waste is due to negligence on the part of the operator of the lease.

One industry commenter stated that producer-owned pipelines should include transportation losses as part of operating expenses in the formulation of an allowance.

MMS Response: All of the issues of theoretical and actual line losses have been considered at length by MMS. The MMS will include as part of a transportation allowance under an arm's-length contract amounts required to be paid in cash or in kind for line losses. However, because of the difficulty of demonstrating that losses are valid and not the result of meter error or other difficult-to-measure causes, MMS has decided not to treat line losses as valid costs for purposes of computing transportation allowances in non-arm's-length or no contract situations. No change to the final rule was made.

Four comments were received on § 206.105(g), which was proposed as paragraph (f). This section allows use of the transportation allowance rules where transportation is a component of a valuation procedure such as a net-back.

The major concern raised about this paragraph was the application of the transportation allowance regulations to a net-back valuation. Two industry commenters stated that the use of restrictive cost-based transportation allowances is inequitable when the net-back valuation procedure is used and recommended that the section be reworded to recognize total "actual

costs" incurred to move or improve the hydrocarbon for sale downstream.

MMS Response: The MMS has reviewed and analyzed the comments relating to the procedure for netting costs back to the lease to determine a value for royalty purposes. The MMS remains convinced that the cost-based allowance procedure for determining oil transportation allowances is appropriate for determining value under a net-back procedure.

Section 207.5 Contract and sales agreement retention.

Two comments were received regarding § 207.5 (formerly proposed as § 207.4), one from industry and one from a State. The State commenter suggested several modifications to clarify and insure that sufficient documentation on oil sales is maintained and made available to FOGRMA-authorized State auditors and other authorized personnel.

The industry commenter suggested that the regulations should limit the audit period, and thus the time for record retention, to six years. This would avoid "an unnecessary administrative burden" upon industry to maintain records for an indefinite period.

MMS Response: The MMS has modified the final rule to require lessees to maintain and make available all documents relevant to the valuation of production.

This Subpart is not the appropriate place to address record retention requirements. The record retention provisions are found at § 212.51 (a) and (b).

Section 3162.7-4 Royalty rates on oil; sliding and step-scale leases (public land only).

This section was proposed as § 202.101. The Bureau of Land Management (BLM) advised that "the redesignation into 43 CFR must be accomplished prior to finalization of the proposed MMS regulations under 30 CFR Part 202 because the well count regulations (43 CFR Part 3100) must be referenced in the new 30 CFR Part 202." The BLM recommended extensive changes in this part "regardless of whether these regulations remain under 30 CFR or are reassigned to 43 CFR."

MMS Response: No changes to the proposed section will be made in the final rule. However, because this regulation is the responsibility of the BLM, it is being redesignated as 43 CFR 3162.7-4. After redesignation, BLM may elect to make certain revisions. MMS has corrected typographical errors which appeared in the proposed rule.

V. Procedural Matters

Executive Order 12291

The Department of Interior (DOI) has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. This rulemaking consolidates Federal and Indian oil royalty valuation regulations; clarifies DOI oil royalty valuation and oil transportation allowance policy; and provides for consistent royalty valuation policy among all leasable minerals.

Regulatory Flexibility Act

Because this rule primarily consolidates and streamlines existing regulations for consistent application, there are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this rule. Therefore, the DOI has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Lessee reporting requirements will increase approximately $4 million. All oil posted price bulletins or sales contracts will be required to be submitted only upon request, or only in support of a lessee's valuation proposal in unique situations rather than routinely, as under the existing regulations.

Paperwork Reduction Act of 1980

The information collection and recordkeeping requirements located at §§ 206.105, 207.4, and 210.55 of this rule have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3504(h), and assigned OMB Clearance Number 1010-0061.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Part 202

Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 203

Coal, Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources.

30 CFR Part 206

Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources.

30 CFR Part 207

Government contracts, Mineral royalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 210

Continental shelf, Geothermal energy, Government contracts, mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 241

Administrative practice and procedure, Government contracts, Mineral royalties, Oil and gas exploration, Penalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3160

Government contracts, Indian-lands, Land Management Bureau, Mineral royalties, Oil and gas exploration, Penalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

Date: ____________

____

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR Parts 202, 203, 206, 207, 210, 241, and 43 CFR Part 3160 are amended as follows:

TITLE 30—MINERAL RESOURCES

CHAPTER II—MINERALS MANAGEMENT SERVICE, DEPARTMENT OF THE INTERIOR

Subchapter A—Royalty Management

PART 202—ROYALTIES

1. The authority citation for Part 202 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.;* 25 U.S.C. 396a *et seq.;* 25 U.S.C. 2101 *et seq.;* 30 U.S.C. 181 *et seq.;* 30 U.S.C. 351 *et seq.;* 30 U.S.C. 1001 *et seq.;* 30 U.S.C. 1701 *et seq.;* 43 U.S.C. 1301 *et seq.;* 43 U.S.C. 1331 *et seq.;* and 43 U.S.C. 1801 *et seq.*

2. 30 CFR Part 202 is amended by revising the part title and the titles of Subparts B, C, and D to read as follows:

PART 202—ROYALTIES

Subpart B—Oil, Gas, and OCS Sulfur, General

Subpart C—Federal and Indian Oil

Subpart D—Federal and Indian Gas [Reserved]

§§ 202.100 through 202.103 [Removed]

3. Sections 202.100, 202.101, 202.102 and 202.103 under Subpart C are removed.

§§ 202.150, 202.151 and 202.152 [Redesignated as §§ 202.100, 202.53 and 202.52]

Subpart D (§§ 202.150 through 202.151) [Reserved]

Sections 202.150, 202.151 and 202.152 under Subpart D are redesignated as new § 202.100 under Subpart C and §§ 202.53 and 202.52 under Subpart B, respectively, and Subpart D is reserved.

4. In Subpart B, add new § 202.51 and revise §§ 202.52 and 202.53 (formerly §§ 202.152 and 202.151, respectively) to read as follows:

Subpart B—Oil, Gas, and OCS Sulfur, General

Sec.
202.51 Scope and definitions.
202.52 Royalties.
202.53 Minimum royalty.

Subpart B—Oil, Gas, and Sulfur, General

§ 202.51 Scope and definitions.

(a) This part is applicable to Federal and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma) and OCS sulfur leases.

(b) The definitions in Subparts C, D, and I of Part 206 of this Title are applicable to Subparts B, C, D, and I of this part.

§ 202.52 Royalties.

(a) Royalties on oil, gas, and OCS sulfur shall be at the royalty rate specified in the lease, unless the Secretary, pursuant to the provisions of the applicable mineral leasing laws reduces, or in the case of OCS leases reduces or eliminates, the royalty rate or net profit share set forth in the lease.

(b) For purposes of this Subpart, the use of the term "royalty(ies)" includes the term "net profit share(s)".

§ 202.53 Minimum royalty.

For leases that provide for minimum royalty payments, the lessee shall pay the minimum royalty as specified in the lease.

5. 30 CFR Part 202, Subpart C, is amended by revising newly redesignated § 202.100 (formerly § 202.150) and by adding § 202.101 to read as follows:

Subpart C—Federal and Indian Oil

Sec.
202.100 Royalty on oil.
202.101 Standards for reporting and paying royalties.

§ 202.100 Royalty on oil.

(a) Royalties due on oil production from leases subject to the requirements of this part, including condensate separated from gas without processing, shall be at the royalty rate established by the terms of the lease. Royalty shall be paid in value unless MMS requires payment in kind. When paid in value, the royalty due shall be the value for royalty purposes determined pursuant to Part 206 multiplied by the royalty rate in the lease.

(b) All oil (except oil unavoidably lost from the lease site or used on, or for the benefit of, the lease, including that oil used off-lease for the benefit of the lease when such off-lease use is permitted by the appropriate agency) produced from a Federal or Indian lease to which this Part applies is subject to royalty. Where the terms of any lease are inconsistent with this section, the lease terms shall govern to the extent of that inconsistency.

(c) If BLM determines that oil was avoidably lost or wasted from an onshore lease, or that oil was drained from an onshore lease for which compensatory royalty is due, or if MMS determines that oil was avoidably lost or wasted from an offshore lease, then the value of that oil shall be determined in accordance with Part 206.

(d) In those instances where the lessee of any lease committed to a federally approved unitization or communitization agreement does not actually take the proportionate share of the agreement production attributable to its lease under the terms of the agreement, the full share of production attributable to the lease under the terms of the agreement nonetheless is subject to the royalty payment and reporting requirements of this Title. The value for royalty purposes of that production will be determined in accordance with Part 206. In applying the requirements of Part 206, the circumstances involved in the actual disposition of the portion of the production to which the lessee was entitled but did not take shall be considered as controlling in arriving at the value for royalty purposes of that portion as if the person actually selling or disposing of the production were the lessee of the Federal or Indian lease.

§ 202.101 Standards for reporting and paying royalties.

Oil volumes are to be reported in barrels of clean oil of 42 standard U.S. gallons (231 cubic inches each) at 60 °F. When reporting oil volumes for royalty purposes, corrections must have been made for basic sediment and water (BS&W) and other impurities. Reported American Petroleum Institute (API) oil gravities are to be those determined in accordance with standard industry procedures after correction to 60 °F.

PART 203—RELIEF OR REDUCTION IN ROYALTY RATE

1. The authority citation for Part 203 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et* seq.; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. 30 CFR Part 203 is amended by revising the titles of Subparts B, C, and D to read as follows:

Subpart B—Oil, Gas and OCS Sulfur, General

Subpart C—Federal and Indian Oil [Reserved]

Subpart D—Federal and Indian Gas [Reserved]

§ 203.100 [Removed]

3. Section § 203.100 under Subpart C is removed.

§ 203.150 [Redesignated as § 203.50]

Subparts C and D [Reserved]

Section 203.150 under Subpart D is redesignated as § 203.50 under Subpart B, and Subparts C and D are reserved.

PART 206—PRODUCT VALUATION

1. The authority citation for Part 206 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et* seq.; and 43 U.S.C. 1801 *et seq.*

2. 30 CFR Part 206 is amended by revising the titles of Subparts B, C, and D to read as follows:

Subpart B—Oil, Gas, and OCS Sulfur, General—[Reserved]

Subpart C—Federal and Indian Oil

Subpart D—Federal and Indian Gas—[Reserved]

§§ 206.103 and 206.104 [Removed]

3. Sections 206.103 and 206.104 are removed.

4. 30 CFR Part 206, Subpart C, is amended by adding new §§ 206.103 and 206.104 and by revising §§ 206.100, 206.101, 206.102, and 206.105 to read as follows:

§ 206.100 Purpose and scope.

(a) This subpart is applicable to all oil production from Federal and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

(b) If the specific provisions of any statute, treaty, or oil and gas lease subject to the requirements of this Part are inconsistent with any regulation in this Part, then the statute, treaty, or lease provision shall govern to the extent of that inconsistency.

(c) All royalty payments made to MMS or to any Tribe or allottee are subject to audit and adjustment.

(d) The regulations in this part are intended to ensure that any responsibilities of the United States with respect to the administration of Indian oil and gas leases are discharged in accordance with the requirements of the governing mineral leasing laws, treaties, and lease terms.

§ 206.101 Definitions.

For the purposes of this part (and Parts 202, 203, 207, 210, and 241 of this chapter):

"Allowance" means an approved or an MMS-initially accepted deduction in determining value for royalty purposes. "Transportation allowance" means an allowance for the reasonable, actual costs incurred by the lessee for moving oil to a point of sale or point of delivery off the lease, unit area, or communitized area, excluding gathering, or an approved or MMS-initially accepted deduction for costs of such transportation, determined pursuant to this subpart.

"Area" means a geographic region at least as large as the defined limits of an oil and/or gas field in which oil and/or gas lease products have similar quality, economic, and legal characteristics.

"Arm's-length contract" means a contract or agreement between independent, nonaffiliated persons which reflects the total consideration actually transferred directly or indirectly from the buyer to the seller for the oil. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person. For purposes of this section, based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership:

(a) Ownership in excess of 50 percent constitutes control;

(b) Ownership of 20 through 50 percent creates a presumption of control; and

(c) Ownership of less than 20 percent creates a presumption of noncontrol.

Notwithstanding any other provisions of this section, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. The MMS may require the lessee to certify ownership control. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for that production month, as well as when the contract was executed.

"Audit" means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal and Indian leases.

"BIA" means the Bureau of Indian Affairs of the Department of the Interior.

"BLM" means the Bureau of Land Management of the Department of the Interior.

"Condensate" means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

"Contract" means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

"Field" means a geographic region situated over one or more subsurface oil and gas reservoirs encompassing at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields are usually given names and their official boundaries are often designated by oil and gas regulatory agencies in the respective states in which the fields are located. Outer Continental Shelf (OCS) fields are named and their boundaries are designated by MMS.

"Gathering" means the movement of lease production to a central accumulation or treatment point on the lease, unit or communitized area, or to a central accumulation or treatment point off the lease, unit, or communitized area as approved by BLM or MMS OCS operations personnel for onshore and offshore leases, respectively.

"Gross proceeds" (for royalty payment purposes) means the total monies and other consideration paid to an oil and gas lessee for the disposition of the oil. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as dehydration, measurement, and/or gathering to the extent that the lessee is obligated to perform them at no cost to the Federal Government or Indian lessor. Gross proceeds, as applied to oil, also includes, but is not limited to: reimbursements, including, but not limited to, reimbursements for harboring or terminalling fees. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal or Indian royalty interest may be exempt from taxation. Payment or credits for advanced exploration or development costs or prepaid reserve payments that are subject to recoupment through credits against the purchase price or through reduced prices in later sales and which are made before production commences become part of gross proceeds as of the time of first production. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

"Indian allottee" means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation.

"Indian Tribe" means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any land or interest in land is held in trust by the United States or which is subject to Federal restriction against alienation.

"Lease" means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products—or the land area covered by that authorization, whichever is required by the context.

"Lease products" means any leased minerals attributable to, originating

from, or allocated to Outer Continental Shelf, onshore Federal or Indian leases.

"Lessee" means any person to whom the United States, an Indian Tribe, or an Indian allottee issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

"Like-quality lease products" means lease products which have similar chemical, physical, and legal characteristics.

"Load oil" means any oil which has been used with respect to the operation of oil or gas wells for wellbore stimulation, workover, chemical treatment, or production purposes. It does not include oil used at the surface to place lease production in marketable condition.

"Marketable condition" means lease products which are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area.

"Minimum royalty" means that minimum amount of annual royalty that the lessee must pay as specified in the lease or in applicable leasing regulations.

"Net-back method" (or work-back method) means a method for calculating market value of oil at the lease when value cannot be calculated on the basis of oil of comparable value. Under this method costs of transportation, processing or manufacturing are deducted from the ultimate proceeds received for the oil and any extracted, processed, or manufactured products to ascertain value at the lease.

"Net profit share" (for applicable Federal and Indian lessees) means the specified share of the net profit from production of oil and gas as provided in the agreement.

"Oil" means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities and is marketed or used as such. Condensate recovered in lease separators or field facilities is considered to be oil. For purposes of royalty valuation, the term tar sands is defined separately from oil.

"Oil shale" means a kerogen (i.e., fossilized, insoluble, organic material) bearing rock. Separation of kerogen from oil shale may take place in situ or in surface retorts by various processes. The kerogen upon distillation will yield liquid and gaseous hydrocarbons.

"Outer Continental Shelf (OCS)" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

"Person" means any individual, firm, corporation, association, partnership, consortium, or joint venture.

"Posted price" means the price specified in publicly available posted price bulletins, offshore or onshore terminal postings, or other price notices net of all adjustments for quality (*e.g.*, API gravity, sulfur content, etc.) and location for oil in marketable condition.

"Processing" means any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes which normally take place on or near the lease such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing.

"Section 6 lease" means an OCS lease subject to section 6 of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. 1335.

"Selling arrangement" means the individual contractual arrangements under which sales or dispositions of oil are made. Selling arrangements are described by illustration in the MMS Royalty Management Program (Oil and Gas or Solid Minerals) Payor Handbook.

"Spot sales agreement" means a contract wherein a seller agrees to sell to a buyer a specified amount of oil at a specified price over a fixed period, usually of short duration, which does not require a cancellation notice to terminate, and which does not normally contain an obligation, nor imply an intent, to continue in subsequent periods.

"Tar sands" means any consolidated or unconsolidated rock (other than coal, oil shale, or gilsonite) that either contains a hydrocarbonaceous material with a gas-free viscosity greater than 10,000 centipoise at original reservoir temperature, or contains a hydrocarbonaceous material and is produced by mining or quarrying.

§ 206.102 Valuation standards.

(a)(1) The value, for royalty purposes, of oil from leases subject to this subpart shall be the value determined pursuant to this section less applicable allowances determined pursuant to this subpart.

(2)(i) For any Indian leases which provide that the Secretary may consider the highest price paid or offered for a major portion (major portion) in determining value for royalty purposes, if data are available to compute a major portion, MMS will, where practicable, compare the value determined in accordance with this section with the major portion. The value to be used in determining the value for royalty purposes shall be the higher of those two values unless MMS determines that the value for royalty purposes determined in accordance with the other provisions of this section is the highest reasonable royalty value.

(ii) For purposes of this paragraph, major portion means the highest price paid or offered at the time of production for the major portion of oil production from the same field. The major portion will be calculated using like-quality oil sold from the same field (or, if necessary to obtain a reasonable sample, from the same area) for each month. All such oil production will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent (by volume) plus 1 barrel of the oil (starting from the bottom) is sold.

(b)(1) The value of oil which is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee. The value which the lessee reports for royalty purposes is subject to monitoring, review, and audit. In conducting these reviews and audits, MMS will determine whether the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the oil, or whether there may be factors which would cause the contract not to be arm's-length. The MMS may direct a lessee to pay royalty based upon a different value if it determines that the lessee's reported value is inconsistent with the requirements of these regulations.

(2) The MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer for the oil.

(c) The value of oil production from leases subject to this section which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following paragraphs:

(1) The lessee's contemporaneous posted prices or oil sales contract prices used in arm's-length transactions for purchases or sales of significant

quantities of like-quality oil in the same field or area; if the lessee makes arm's-length purchases or sales at different postings or prices, then the volume-weighted average price for the purchases or sales for the production month reported on Form MMS-2014 will be used;

(2) The arithmetic average of contemporaneous posted prices used in arm's-length transactions by persons other than the lessee for purchases or sales of significant quantities of like-quality oil in the same field or area;

(3) The arithmetic average of other contemporaneous arm's-length contract prices for purchases or sales of significant quantities of like-quality oil in the same area or nearby areas;

(4) Prices received for arm's-length spot sales of significant quantities of like-quality oil from the same field or area, and other relevant matters, including information submitted by the lessee concerning circumstances unique to a particular lease operation or the saleability of certain types of oil;

(5) If an appropriate value cannot be determined using paragraphs (c)(1) through (4), a net-back method or any other reasonable method to determine value may be used; and

(6) For purposes of this subsection, the term lessee includes the lessee's designated purchasing agent, and the term contemporaneous means postings or contract prices in effect at the time the royalty obligation is incurred.

(d) Any Federal or Indian lessee will make available upon request to the authorized MMS, State, or Indian representatives, or to the Office of the Inspector General of the Department of the Interior, the General Accounting Office or other persons authorized to receive such information, arm's-length sales and volume data for like-quality production sold, purchased or otherwise obtained by the lessee from the field or area or from nearby fields or areas.

(e)(1) Where the value is determined pursuant to paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) A lessee shall notify MMS if it has determined value pursuant to § 206.102(c) (4) or (5). The notification shall be by letter to the MMS Associate Director for Royalty Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this section is a one-time notification due no later than the month the lessee first reports royalties on a Form MMS-2014 using a valuation method authorized by § 206.102(c) (4) or (5) and each time there is a change from one to the other of these two methods.

(f) If MMS determines that a lessee has not properly determined value, the lessee shall pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also pay interest computed pursuant to 30 CFR 218.54. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(g) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method and may use that value for royalty payment purposes until MMS issues a value determination. The lessee shall submit all available data relevant to its proposal. MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (f) of this section.

(h) Notwithstanding any other provision of this section, under no circumstances shall the value for royalty purposes be less than the gross proceeds accruing to the lessee for lease production, less applicable allowances determined pursuant to this subpart.

(i)(1) The lessee is required to place oil in marketable condition at no cost to the Federal Government or Indian lessor unless otherwise provided in the lease agreement or this section. Where the value established pursuant to this section is determined by a lessee s gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the oil in marketable condition.

(2) If the lessee incurs extraordinary costs for the gathering, desulfurization or storage of oil from frontier or deep water areas and those costs relate to unusual or unconventional operations, it may apply to MMS for an allowance. Such an allowance may be granted only if:

(i) The costs are associated with leases located north of the Arctic Circle, or the costs are associated with offshore leases located in water depths in excess of 400 meters; and

(ii) The lessee can demonstrate that the costs are, by reference to standard industry conditions and practice, extraordinary, unusual, or unconventional.

(3) The MMS shall determine the amount of the extraordinary cost allowance which shall remain in effect for the period specified in the approval, not to exceed 1 year. To retain the authority to deduct the allowance, the lessee must report the deduction to MMS at the end of the approval period, and annually thereafter, in a form and manner prescribed by MMS. MMS annually shall reconsider whether a unique production operation will continue to be eligible for an extraordinary cost allowance determined in accordance with this subsection. Extraordinary cost allowance deductions are subject to monitoring, review, audit, and adjustment.

(j) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of oil.

(k) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by the MMS of value under this section shall be considered final or binding as against the Federal Government, its beneficiaries, the Indian Tribes, or allottees until the audit period is formally closed.

(l) Certain information submitted to MMS to support valuation proposals, including transportation allowances or extraordinary cost allowances, is exempted from disclosure by the

Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt, may be maintained in a confidential manner in accordance with applicable laws and regulations. All requests for information about determinations made under this Part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2. Nothing in this section is intended to limit or diminish in any manner whatsoever the right of an Indian lessor to obtain any and all information to which such lessor may be lawfully entitled from MMS or such lessor's lessee directly under the terms of the lease, 30 U.S.C. 1733, or other applicable law.

§ 206.103 Point of royalty settlement.

(a)(1) Royalties shall be computed on the quantity and quality of oil as measured at the point of settlement approved by BLM or MMS for onshore and offshore leases, respectively.

(2) If the value of oil determined pursuant to § 206.102 is based upon a quantity and/or quality different from the quantity and/or quality at the point of royalty settlement approved by the BLM for onshore leases or the MMS for offshore leases, the value shall be adjusted for those differences in quantity and/or quality.

(b) No deductions may be made from the royalty volume or royalty value for actual or theoretical losses. Any actual loss that may be sustained prior to the royalty settlement metering or measurement point will not be subject to royalty provided that such actual loss is determined to have been unavoidable by BLM or MMS, as appropriate.

(c) Except as provided in paragraph (b) of this section, royalties are due on 100 percent of the volume measured at the approved point of royalty settlement. There can be no reduction in that measured volume for actual losses beyond the approved point of royalty settlement or for theoretical losses that are claimed to have taken place either prior to or beyond the approved point of royalty settlement. Royalties are due on 100 percent of the value of the oil as provided in this part. There can be no deduction from the value of the oil for royalty purposes to compensate for actual losses beyond the approved point of royalty settlement or for theoretical losses that are claimed to have taken place either prior to or beyond the approved point of royalty settlement.

§ 206.104 Transportation allowances—general.

(a) Where the value of oil has been determined pursuant to § 206.102 at a point (e.g. sales point or point of value determination) off the lease, MMS shall allow a deduction for the reasonable actual costs incurred by the lessee to:

(1) Transport oil from an onshore lease to the point off the lease; provided, however, that for onshore leases, no transportation allowance will be granted for transporting oil taken as royalty in kind; or

(2) Transport oil from an offshore lease to the point off the lease; provided, however, that for oil taken as royalty in kind, a transportation allowance shall be provided for the reasonable actual costs incurred to transport that oil to the delivery point specified in the contract between the royalty in kind oil purchaser and the Federal Government.

(b)(1) Except as provided in paragraph (b)(2) of this section, the transportation allowance deduction on the basis of a selling arrangement shall not exceed 50 percent of the value of the oil at the point of sale as determined pursuant to § 206.102. Transportation costs cannot be transferred between selling arrangements or to other products.

(2) Upon request of a lessee, MMS may approve a transportation allowance deduction in excess of the limitation prescribed by paragraph (b)(1) of this section. The lessee must demonstrate that the transportation costs incurred in excess of the limitation prescribed in paragraph (b)(1) of this section were reasonable, actual, and necessary. An application for exception shall contain all relevant and supporting documentation necessary for the MMS to make a determination. Under no circumstances shall the value for royalty purposes under any selling arrangement be reduced to zero.

(c) Transportation costs must be allocated among all products produced and transported. However, no transportation deduction shall be allowed for products which are not royalty bearing. Transportation allowances for oil shall be expressed as dollars per barrel.

(d) If, after a review and/or audit, MMS determines that a lessee has improperly determined a transportation allowance authorized by this Subpart, then the lessee shall pay any additional royalties, plus interest determined in accordance with 30 CFR 218.54, or shall be entitled to a credit, without interest.

§ 206.105 Determination of transportation allowances.

(a) *Arm's-length transportation contracts.* (1) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable actual costs incurred by the lessee for transporting oil under that contract, subject to monitoring, review, audit, and adjustment. Such allowances shall be subject to the provisions of paragraph (f) of this section. Before any deduction may be taken, the lessee must submit a completed page one of Form MMS-4110, Oil Transportation Allowance Report, in accordance with paragraph (c)(1) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS-4110 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

(2) If an arm's-length transportation contract includes more than one liquid product and the transportation costs attributable to each product cannot be determined from the contract, then the total transportation costs shall be allocated in a consistent and equitable manner to each of the liquid products transported in the same proportion as the ratio of the volume of each product (including water) to the volume of all liquid products. No allowance may be taken for the costs of transporting lease production which is not royalty bearing.

(3) If an arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. The lessee may use the oil transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all available data to support its proposal. The initial proposal must be submitted by [*insert the last day of the month which is 3 months after the last day of the month of the effective date of these regulations*] or within 3 months after the last day of the month for which the lessee requests a transportation allowance, whichever is later (unless MMS approves a longer period). The MMS shall then determine the oil transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary. No allowance may be taken for the costs of transporting lease production which is not royalty bearing.

(4) Where the lessee's payments for transportation under an arm's-length contract are not on a dollar per unit basis, the lessee shall convert whatever consideration is paid to a dollar value

equivalent for the purposes of this section.

(5) Where an arm's-length sales contract price or a posted price includes a provision whereby the listed price is reduced by a transportation factor, MMS will not consider the transportation factor to be a transportation allowance. The transportation factor may be used in determining the lessee's gross proceeds for the sale of the product. No additional transportation allowance will be granted in such circumstances.

(b) *Non-arm's-length or no contract.* (1) If a lessee has a non-arm's-length transportation contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable actual costs as provided in this subsection. All transportation allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and adjustment. Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS-4110 in its entirety in accordance with § 206.105(c)(2). A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS-4110 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. The MMS will monitor the allowance deductions to determine whether lessees are taking deductions that are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual transportation allowance deduction.

(2) The transportation allowance for non-arm's-length or no contract situations shall be based upon the lessee's actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial capital investment in the transportation system multiplied by the rate of return (determined pursuant to paragraph (b)(2)(v) of this section) in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) A lessee may use either depreciation (paragraph (b)(2)(iv)(A) of this section) or a return on depreciable capital investment (paragraph (b)(2)(iv)(B) of this section). Once a lessee has elected to use either (A) or (B) for a transportation system, the lessee may not later elect to change to the other alternative without approval of the MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the transportation system services or on a unit-of-production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership a transportation system shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) The MMS shall allow as a cost an amount equal to the initial capital investment in the transportation system multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to transportation facilities first placed in service after [*enter the effective date of these regulations*].

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average rate as published in *Standard and Poor's Bond Guide* for the first month of the reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent transportation allowance reporting period (which is determined pursuant to § 206.105(c)(2)).

(3) The deduction for transportation costs shall be determined based on the lessee's cost of transporting each product through each individual transportation system. Where more than one liquid product is transported, allocation of costs to each of the liquid products transported shall be in the same proportion as the ratio of the volume of each liquid product (including water) to the volume of all liquid products and such allocation shall be made in a consistent and equitable manner. The lessee may not take an allowance for transporting lease production which is not royalty bearing.

(4) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to MMS. The lessee may use the oil transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all available data to support its proposal. The initial proposal must be submitted by [*insert the last day of the month which is 3 months after the last day of the month of the effective date of these regulations*] or within 3 months after the last day of the month for which the lessee requests a transportation allowance, whichever is later (unless MMS approves a longer period). The MMS shall then determine the oil transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary. The lessee may not take an allowance for transporting a product which is not royalty bearing.

(5) A lessee may apply to the MMS for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(4) of this section. The MMS may grant the exception only if:

(i) The lessee has arm's-length contracts for transportation of other production through the same transportation system;

(ii) The lessee has a tariff for the transportation system approved by the Federal Energy Regulatory Commission; and

(iii) The persons purchasing transportation services from the lessee had a reasonable alternative to using the lessee's transportation system.

If the MMS grants the exception, the lessee shall use as its transportation allowance the volume-weighted average prices it charges other persons pursuant to arm's-length contracts for transportation through the same transportation system.

(c) *Reporting requirements*—(1) *Arm's-length contracts.* (i) With the exception of those transportation allowances specified in paragraph (c)(1)(v) of this section, the lessee shall submit page one of the initial Form MMS-4110, Oil Transportation Allowance Report, prior to, or at the same time as, the transportation allowance determined pursuant to an arm's-length contract is reported on Form MMS-2014, Report of Sales and Royalty Remittance.

(ii) The initial Form MMS-4110 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS-4110 within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period. Lessees may request special reporting procedures in unique allowance reporting situations, such as those that relate to spot sales.

(iv) The MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Transportation allowances which are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate.

(2) *Non-arm's-length or no contract.* (i) With the exception of transportation allowances specified in paragraph (c)(2)(v) of this section, the lessee shall submit an initial Form MMS-4110 prior to, or at the same time as, the transportation allowance determined pursuant to a non-arm's-length contract or no contract situation is reported on Form MMS-2014. The initial report may be based upon estimated costs.

(ii) The initial Form MMS-4110 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until transportation under the non-arm's-length contract or the no contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS-4110 containing the actual costs for the previous reporting period. If oil transportation is continuing, the lessee shall include on Form MMS-4110 its estimated costs for the next calendar year. The estimated oil transportation allowance shall be based on the actual costs for the previous reporting period plus or minus any adjustments which are based on the lessee's knowledge of decreases or increases which will affect the allowance. MMS must receive the Form MMS-4110 within 3 months after the end of the previous reporting period, unless MMS approves a longer period.

(iv) For new transportation facilities or arrangements, the lessee's initial Form MMS-4110 shall include estimates of the allowable oil transportation costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the transportation system, or if such data are not available, the lessee shall use estimates based upon industry data for similar transportation systems.

(v) Non-arm's-length contract or no contract based transportation allowances which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate.

(vi) Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS-4110. The data shall be provided within a reasonable period of time, as determined by MMS.

(3) The MMS may establish reporting dates for individual lessees different than those specified in this subpart in order to provide more effective administration. Lessees will be notified as to any change in their reporting period.

(4) Transportation allowances must be reported as a separate line item on Form MMS-2014, unless MMS approves a different reporting procedure.

(d) Interest assessments for incorrect or late reports and for failure to report.

(1) If a lessee deducts a transportation allowance on its Form MMS-2014 without complying with the requirements of this section, the lessee shall pay interest only on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.54.

(e) *Adjustments.* (1) If the actual transportation allowance is less than the amount the lessee has estimated and taken during the reporting period, the lessee shall be required to pay additional royalties due plus interest computed pursuant to 30 CFR 218.54, retroactive to the first month the lessee is authorized to deduct a transportation allowance. If the actual transportation allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to a credit without interest.

(2) For lessees transporting production from onshore Federal and Indian leases, the lessee must submit a corrected Form MMS-2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

(3) For lessees transporting production from Federal OCS leases, if the lessee's estimated costs were more than the actual costs, the lessee must submit a corrected Form MMS-2014 to reflect actual costs together with its payment, in accordance with instructions provided by MMS. If the lessee's estimated costs were less than its actual costs, the refund procedure will be specified by MMS.

(f) Notwithstanding any other provisions of this subpart, for other than arm's-length contracts, no cost shall be allowed for oil transportation which results from payments (either volumetric or for value) for actual or theoretical losses.

(g) *Other transportation cost determinations.* The provisions of this section shall apply to determine transportation costs when establishing value using a net-back valuation procedure or any other procedure that requires deduction of transportation costs.

Part 207 is revised to read as follows:

PART 207—SALES AGREEMENTS OR CONTRACTS GOVERNING THE DISPOSAL OF LEASE PRODUCTS

Subpart A—General Provisions

Sec.

Subpart B—Oil, Gas and OCS Sulfur, General [Reserved]

Subpart C—Federal and Indian Oil [Reserved]

Subpart D—Federal and Indian Gas [Reserved]

Subpart E—Solid Minerals, General [Reserved]

Subpart F—Coal [Reserved]

Subpart G—Other Solid Minerals [Reserved]

Subpart H—Geothermal Resources [Reserved]

Subpart I—OCS Sulfur [Reserved]

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; and 30 U.S.C. 1701 *et seq.*

Subpart A—General Provisions

§ 207.1 Required recordkeeping.

The recordkeeping requirements contained in Part 207 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned OMB Clearance Number 1010–0061.

§ 207.2 Definitions.

The definitions in Part 206 of this title are applicable to this part.

§ 207.3 Contracts made pursuant to new form leases.

On November 29, 1950 (15 FR 8585), a new form of lease was adopted (Form 4–1158, 15 FR 8585) containing provisions whereby the lessee agrees that nothing in any contract or other arrangement made for the sale or disposal of oil, gas, natural gasoline, and other products of the leased land, shall be construed as modifying any of the provisions of the lease, including, but not limited to, provisions relating to gas waste, taking royalty in kind, and the method of computing royalties due as based on a minimum valuation and in accordance with the oil and gas valuation regulations. A contract or agreement pursuant to a lease containing such provisions may be made without obtaining prior approval of the United States as lessor, but must be retained as provided in § 207.5.

§ 207.4 Contracts made pursuant to old form leases.

(a) Old form leases are those containing provisions prohibiting sales or disposal of oil, gas, natural gasoline, and other products of the lease except in accordance with a contract or other arrangement approved by the Secretary of the Interior, or by the Director of the Minerals Management Service or his/her representative. A contract or agreement made pursuant to an old form lease may be made without obtaining approval if the contract or agreement either contains the substance of or is accompanied by the stipulation set forth in paragraph (b) of this section, signed by the seller (lessee or operator).

(b) The stipulation, the substance of which must be included in the contract, or be made the subject matter of a separate instrument properly identifying the leases affected thereby, is as follows:

It is hereby understood and agreed that nothing in the written contract or in any approval thereof shall be construed as affecting any of the relations between the United States and its lessee, particularly in matters of gas waste, taking royalty in kind, and the method of computing royalties due as based on a minimum valuation and in accordance with the terms and provisions of the oil and gas valuation regulations applicable to the lands covered by said contract.

§ 207.5 Contract and sales agreement retention.

Copies of all sales contracts, posted price bulletins, etc., and copies of all agreements, other contracts, or other documents which are relevant to the valuation of production are to be maintained by the lessee and made available upon request during normal working hours to authorized MMS, State or Indian representatives, other MMS or BLM officials, auditors of the General Accounting Office, or other persons authorized to receive such documents, or shall be submitted to MMS within a reasonable period of time, as determined by MMS. Any oral sales arrangement negotiated by the lessee must be placed in written form and retained by the lessee. Records shall be retained in accordance with 30 CFR Part 212.

PART 210—FORMS AND REPORTS

1. The authority citation for Part 210 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; *30 U.S.C. 1001 et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. 30 CFR Part 210 is amended by revising the titles of Subparts B, C, D, E, F, and G to read as follows:

Subpart B—Oil, Gas, and OCS Sulfur—General

Subpart C—Federal and Indian Oil—[Reserved]

Subpart D—Federal and Indian Gas—[Reserved]

Subpart F—Coal [Reserved]

Subpart G—Other Solid Minerals [Reserved]

3. The following subparts are added to Part 210:

Subpart H—Geothermal Resources [Reserved]

Subpart I—OCS Sulfur—[Reserved]

§§ 210.100 through 210.105, 210.150 and 210.151 [Removed]

4. Sections 210.100, 210.101, 210.102, 210.103, 210.104 and 210.105 under Subpart C and §§ 210.150 and 210.151 under Subpart D are removed.

§§ 210.300 and 210.301 [Redesignated as §§ 210.350 and 210.351]

Sections 210.300 and 210.301 under Subpart F are redesignated as new §§ 210.350 and 210.351, respectively, under new Subpart H.

5. 30 CFR Part 210, Subpart B, is amended by adding § 210.55 to read as follows:

§ 210.55 Special forms or reports.

When special forms or reports other than those referred to in the regulations in this part may be necessary, instructions for the filing of such forms or reports will be given by the MMS.

PART 241—PENALTIES

1. The authority citation for Part 241 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. 30 CFR Part 241 is amended by revising the titles of Subparts B, C, and D to read as follows:

Subpart B—Oil, Gas, and OCS Sulfur, General

Subpart C—Federal and Indian Oil—[Reserved]

Subpart D—Federal and Indian Gas—[Reserved]

Subpart H—[Removed]

3. Subpart H, Indian Lands, is removed.

Subparts E, F, and G [Redesignated as Subparts F, G, and H]

4. Subparts E, F, and G are redesignated as Subparts F, G, and H, respectively.

5. A new Subpart I is added to read:

Subpart I—OCS Sulfur [Reserved]

6. A new Subpart E is added to read:

Subpart E—Solid Minerals, General [Reserved]

§ 241.10 [Removed and reserved]

7. Section 241.10 is removed and reserved.

§ 241.50 [Amended]

8. Section 241.50 is amended by removing the phrase "this subpart" and replacing it with the phrase "Subparts B, C and D of this part."

§ 241.100 [Redesignated as § 241.60 and amended]

Subpart C (§ 241.100)—[Reserved]

9. Section 241.100 under Subpart C is redesignated as a new § 241.60 under Subpart B and retitled "Assessments for nonperformance" and Subpart C is reserved.

§ 241.60 (New) [Amended]

10. Paragraph (c) from newly redesignated § 241.60 is removed.

TITLE 43—PUBLIC LANDS: INTERIOR

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

PART 3160—ONSHORE OIL AND GAS OPERATIONS—GENERAL

1. The authority citation for Part 3160 continues to read as follows:

Authority: The Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Act of May 21, 1930 (30 U.S.C. 301–306), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 298a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. section 441 (43 U.S.C. 1457), the Attorney General's Opinion of April 2, 1941 (40 Op Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 *et seq.*), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Act of December 12, 1980 (94 Stat. 2964), the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701), the Indian Mineral Development Act of 1982 (25 U.S.C. 2102).

§ 3162.7–4 [Redesignated as § 3162.7–5]

2. Section 3162.7–4 is redesignated as a new § 3162.7–5 and a new § 3162.7–4 is added to read as follows:

§ 3162.7–4 Royalty rates on oil; sliding and step-scale leases (public land only).

Sliding- and step-scale royalties are based on the average daily production per well. The BLM authorized officer shall specify which wells on a leasehold are commercially productive, including in that category all wells, whether produced or not, for which the annual value of permissible production would be greater than the estimated reasonable annual lifting cost, but only wells that yield a commercial volume of production during at least part of the month shall be considered in ascertaining the average daily production per well. The average daily production per well for a lease is computed on the basis of a 28-, 29-, 30-, or 31-day month (as the case may be), the number of wells on the leasehold counted as producing, and the gross production from the leasehold. The BLM authorized officer will determine which commercially productive wells shall be considered each month as producing wells for the purpose of computing royalty in accordance with the following rules, and in the authorized officer's discretion may count as producing any commercially productive well shut in for conservation purposes.

(a) For a previously producing leasehold, count as producing for every day of the month each previously producing well that produced 15 days or more during the month, and disregard wells that produced less than 15 days during the month.

(b) Wells approved by the BLM authorized officer as input wells shall be counted as producing wells for the entire month if so used 15 days or more during the month and shall be disregarded if so used less than 15 days during the month.

(c) When the initial production of a leasehold is made during the calendar month, compute royalty on the basis of producing well days.

(d) When a new well is completed for production on a previously producing leasehold and produces for 10 days or more during the calendar month in which it is brought in, count such new wells as producing every day of the month, in arriving at the number of producing well days. Do not count any new well that produces for less than 10 days during the calendar month.

(e) Consider "head wells" that make their best production by intermittent pumping or flowing as producing every day of the month, provided they are regularly operated in this manner with approval of the BLM authorized officer.

(f) For previously producing leaseholds on which no wells produced for 15 days or more, compute royalty on the basis of actual producing well days.

(g) For previously producing leaseholds on which no wells were productive during the calendar month but from which oil was shipped, compute royalty at the same royalty percentage as that of the last preceding calendar month in which production and shipments were normal.

(h) Rules for special cases not subject to definition, such as those arising from averaging the production from two distinct sands or horizons when the production of one sand or horizon is relatively insignificant compared to that of the other, shall be made by the BLM authorized officer as need arises.

(i)(1) In the following summary of operations on a typical leasehold for the

month of June, the wells considered for the purpose of computing royalty on the entire production of the property for the months are indicated.

Well No. and record	Count (marked X)
1. Produced full time for 30 days	X
2. Produced for 26 days; down 4 days for repairs	X
3. Produced for 28 days; down June 5, 12 hours, rods; June 14, 6 hours, engine down; June 26, 24 hours, pulling rods and tubing	X
4. Produced for 12 days; down June 13 to 30	
5. Produced for 8 hours every day (head well)	X
6. Idle producer (not operated)	
7. New well, completed June 17; produced for 14 days	X
8. New Well, completed June 22; produced for 9 days	

(2) In this example, there are eight wells on the leasehold, but wells No. 4, 6, and 8 are not counted in computing royalties. Wells No. 1, 2, 3, 5, and 7 are counted as producing for 30 days. The average production per well per day is determined by dividing the total production of the leasehold for the month (including the oil produced by wells 4 and 8) by 5 (the number of wells counted as producing), and dividing the quotient thus obtained by the number of days in the month.

[FR Doc. 87-18530 Filed 8-14-87; 8:45 am]

BILLING CODE 4310-MR-M

federal register

Monday
August 17, 1987

Part IV

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

August 1, 1987.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of August 1, 1987, of 57 deferrals contained in the five special messages of FY 1987. These messages were transmitted to the Congress on September 26, and December 15, 1986, and January 5 and 28, and March 4, 1987.

Rescissions (Table A and Attachment A)

As of August 1, 1987, there were no rescission proposals pending before the Congress.

Deferrals (Table B and Attachment B)

As of August 1, 1987, $4,961.8 million in 1987 budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1987.

Information from Special Messages

The special message containing information on the deferrals covered by this cumulative report is printed in the **Federal Register** listed below:

Vol. 51, FR p. 35976, Tuesday, October 7, 1986

Vol. 51, FR p. 47356, Wednesday, December 31, 1986

Vol. 52, FR p. 964, Friday, January 9, 1987

Vol. 52, FR p. 3552, Wednesday, February 4, 1987

Vol. 52, FR p. 8046, Friday, March 13, 1987

James C. Miller III,

Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1987 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President..............	$5,835.8
Accepted by the Congress...........................	36.0
Rejected by the Congress........................	5,799.8
Pending before the Congress........................	0

****

TABLE B

STATUS OF 1987 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President................	11,457.6
Routine Executive releases through August 1, 1987 (OMB/Agency releases of $6,322.2 million and cumulative adjustments of $0.7 million)	-6,321.5
Overturned by the Congress......................	-174.3
Currently before the Congress......................	4,961.8

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1987

As of August 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF AGRICULTURE								
Agricultural Research Service								
Buildings and facilities..................	R87-1 R87-1A	28,000		1-5-87 1-28-87		28,000	3-16-87	
Agricultural Stabilization and Conservation Service								
Rural clean water program................	R87-2	6,000		1-5-87	6,000	6,000	3-16-87	P.L. 100-71
Agricultural conservation program........	R87-3	164,356		1-5-87		164,356	3-16-87	
Water bank program.......................	R87-4	8,166		1-5-87		8,166	3-16-87	
Emergency conservation program...........	R87-5	10,000		1-5-87		10,000	3-16-87	
Farmers Home Administration								
Rural water and waste disposal grants....	R87-6	79,500		1-5-87		79,500	3-16-87	
Rural community fire protection grants...	R87-7	2,300		1-5-87		2,300	3-16-87	
Rural housing for domestic farm labor....	R87-8	7,400		1-5-87		7,400	3-16-87	
Mutual and self-help housing.............	R87-9	8,000		1-5-87		8,000	3-16-87	
Very low income housing repair grants....	R87-10	9,400		1-5-87		9,400	3-16-87	
Compensation for construction defects....	R87-11	500		1-5-87		500	3-16-87	
Rural housing preservation grants........	R87-12	14,400		1-5-87		14,400	3-16-87	
Soil Conservation Service								
Watershed and flood prevention operations	R87-13	96,000		1-5-87		96,000	3-16-87	
Great Plains conservation program........	R87-14	8,000		1-5-87		8,000	3-16-87	
Resource conservation and development....	R87-15	5,000		1-5-87		5,000	3-16-87	
Forest Service								
Land acquisition.........................	R87-16	49,030		1-5-87		49,030	3-16-87	
DEPARTMENT OF COMMERCE								
Economic Development Administration								
Economic development assistance programs.	R87-17 R87-17A	169,718 -50		1-5-87 1-28-87		169,668	3-16-87	
International Trade Administration								
Operations and administration............	R87-18	11,400		1-5-87		11,400	3-16-87	
National Oceanic and Atmospheric Administration								
Operations, research, and facilities.....	R87-19	58,857		1-5-87		58,857	3-16-87	
National Telecommunications and Information Administration								
Public telecommunications facilities, planning and construction...............	R87-20	19,300		1-5-87		19,300	3-16-87	

Attachment A - Status of Rescissions - Fiscal Year 1987

As of August 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF DEFENSE - MILITARY								
Procurement								
Procurement of weapons and tracked combat vehicles, Army	R87-21	15,000		1-5-87		15,000	3-16-87	
Other procurement, Navy	R87-22	116,000		1-5-87		116,000	3-16-87	
Military Construction								
Military construction, Air Force	R87-23	2,750		1-5-87		2,750	3-16-87	
DEPARTMENT OF DEFENSE - CIVIL								
Corps of Engineers - Civil								
Construction, general	R87-24	7,715		1-5-87		7,715	3-16-87	
DEPARTMENT OF EDUCATION								
Office of Elementary and Secondary Education								
Compensatory education for the disadvantaged	R87-25	7,500		1-5-87		7,500	3-16-87	
Impact aid	R87-26	17,500		1-5-87		17,500	3-16-87	
Special programs	R87-27	54,980		1-5-87		54,980	3-16-87	
Office of Bilingual Education and Minority Languages Affairs								
Bilingual education	R87-28	45,886		1-5-87		45,886	3-16-87	
Office of Special Education and Rehabilitative Services								
Education for the handicapped	R87-29	288,659		1-5-87		288,659	3-16-87	
Rehabilitation services and handicapped research	R87-30	127,455		1-5-87		127,455	3-16-87	
Office of Vocational and Adult Education								
Vocational and adult education	R87-31	432,319		1-5-87		432,319	3-16-87	
Office of Postsecondary Education								
Student financial assistance	R87-32	1,269,000		1-5-87		1,269,000	3-16-87	
Higher education	R87-33	203,050		1-5-87		203,050	3-16-87	
	R87-33A			1-28-87				
Office of Educational Research and Improvement								
Libraries	R87-34	34,500		1-5-87		34,500	3-16-87	

Attachment A - Status of Rescissions - Fiscal Year 1987

As of August 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF ENERGY								
Energy Programs								
Energy supply, research and development activities..............................	R87-35	81,800		1-5-87		81,800	3-16-87	
Fossil energy research and development...	R87-36	44,464		1-5-87		44,464	3-16-87	
Energy conservation......................	R87-37	87,433		1-5-87				
	R87-37A	-3500		1-28-87		83,933	3-16-87	
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Food and Drug Administration								
Buildings and facilities.................	R87-38	500		1-5-87		500	3-16-87	
Health Resources and Services Administration								
Health resources and services............	R87-39	161,210		1-5-87		161,210	3-16-87	
	R87-39A			1-28-87				
Indian health facilities.................	R87-40	57,100		1-5-87		57,100	3-16-87	
	R87-40A			1-28-87				
National Institutes of Health								
National Library of Medicine.............	R87-41	5,405		1-5-87		5,405	3-16-87	
Office of the Assistant Secretary of Health								
Public health service management.........	R87-42	5,000		1-5-87		5,000	3-16-87	
Departmental Management								
Policy research..........................	R87-43	2,200		1-5-87		2,200	3-16-87	
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R87-44	473,313		1-5-87		473,313	3-16-87	
Housing counseling assistance............	R87-45	3,500		1-5-87		3,500	3-16-87	
Community Planning and Development								
Community development grants.............	R87-46	375,200		1-5-87		375,200	3-16-87	
Urban development action grants..........	R87-47	237,500		1-5-87		237,500	3-16-87	
Management and Administration								
Salaries and expenses....................	R87-48	19,042		1-5-87		19,042	3-16-87	

Attachment A - Status of Rescissions - Fiscal Year 1987

As of August 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF THE INTERIOR								
Bureau of Land Management								
Management of lands and resources........	R87-49	6,500		1-5-87		6,500	3-16-87	
Construction and access..................	R87-50	1,600		1-5-87		1,600	3-16-87	
Land acquisition.........................	R87-51	2,700		1-5-87		2,700	3-16-87	
Bureau of Mines								
Mines and minerals.......................	R87-52	16,594		1-5-87		16,594	3-16-87	
United States Fish and Wildlife Service								
Resource management......................	R87-53	20,500		1-5-87		20,500	3-16-87	
	R87-53A			1-28-87				
Construction.............................	R87-54	23,200		1-5-87		23,200	3-16-87	
Land acquisition.........................	R87-55	26,762		1-5-87		26,762	3-16-87	
National Park Service								
Operation of the national park system....	R87-56	7,950		1-5-87		7,950	3-16-87	
Construction.............................	R87-57	58,981		1-5-87		58,981	3-16-87	
Land acquisition.........................	R87-58	97,638		1-5-87	30,000	97,638	3-16-87	P.L. 100-71
Historic preservation fund...............	R87-59	15,000		1-5-87		15,000	3-16-87	
Bureau of Indian Affairs								
Construction.............................	R87-60	22,811		1-5-87		22,811	3-16-87	
Territorial and International Affairs								
Administration of territories............	R87-61	2,500		1-5-87		2,500	3-16-87	
DEPARTMENT OF JUSTICE								
Immigration and Naturalization Service								
Salaries and expenses....................	R87-62	24,598		1-5-87		24,598	3-16-87	
DEPARTMENT OF LABOR								
Employment and Training Administration								
Training and employment services.........	R87-63	332,000		1-5-87		332,000	3-16-87	

Attachment A - Status of Rescissions - Fiscal Year 1987

As of August 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF THE TREASURY								
Federal Law Enforcement Training Center Salaries and expenses....................	R87-64	8,450		1-5-87		8,450	3-16-87	
Bureau of Alcohol, Tobacco, and Firearms Salaries and expenses....................	R87-65	15,000		1-5-87		15,000	3-16-87	
United States Customs Service Salaries and expenses....................	R87-66	38,945		1-5-87		38,945	3-16-87	
ENVIRONMENTAL PROTECTION AGENCY								
Abatement, control, and compliance.......	R87-67	47,500		1-5-87		47,500	3-16-87	
Buildings and facilities.................	R87-68	2,500		1-5-87		2,500	3-16-87	
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Research and development.................	R87-69	25,796		1-5-87		25,796	3-16-87	
VETERANS ADMINISTRATION								
Medical care.............................	R87-70	75,000		1-5-87		(See Note Below)		
OTHER INDEPENDENT AGENCIES								
Appalachian Regional Commission Appalachian regional development programs	R87-71	31,059		1-5-87		31,059	3-16-87	
National Endowment for the Humanities National capital arts and cultural affairs	R87-72	4,000		1-5-87		4,000	3-16-87	
Selective Service System Salaries and expenses...................	R87-73	409		1-5-87		409	3-17-87	
Total, rescissions.......................		5,835,751	0		36,000	5,760,751		

NOTE. - The $75 million proposed for rescission in Rescission Proposal No. R87-70 was never withheld from obligation. Therefore, there was no need to release the funds on March 16.

Attachment B - Status of Deferrals - Fiscal Year 1987

As of August 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 8-1-87
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Foreign military sales credit..............	D87-22	4,040,441		12-15-86	2,155,000				1,885,441
Economic support fund......................	D87-1	95,000		9-26-86					
	D87-1A		2,351,470	12-15-86	1,901,656				544,814
Military assistance........................	D87-23	847,000		12-15-86	460,641				386,359
International military education and training..................................	D87-24	2,000		12-15-86	2,000				0
Agency for International Development									
Functional development assistance..........	D87-32	2,278		1-28-87					2,278
International disaster assistance..........	D87-25	57,000		12-15-86	55,180				1,820
Special Assistance for Central America									
Assistance for the Nicaraguan Democratic Resistance................................	D87-26	60,000		12-15-86	60,000				0
Promotion of stability and security in Central America.........................	D87-27	1,000		12-15-86					1,000
DEPARTMENT OF AGRICULTURE									
Commodity Credit Corporation									
Temporary emergency food assistance........	D87-33	28,559		1-28-87		28,559	P.L. 100-6		0
Rural Electrification Administration									
Reimbursement to the Rural electrification and telephone and revolving fund for interest subsidies and losses.............	D87-34	20,000		1-28-87	20,000				0
Forest Service									
State and private forestry.................	D87-35	797		1-28-87		797	P.L. 100-71		0
Land acquisition...........................	D87-36	27,070		1-28-87		27,070	P.L. 100-71		0
Expenses, brush disposal...................	D87-2	111,202		9-26-86					
	D87-2A		1,534	3-4-87					112,736
Timber roads, purchaser election...........	D87-37	11,900		1-28-87		11,900	P.L. 100-71		0
Timber salvage sales.......................	D87-3	29,731		9-26-86	6,113			3	23,621
Cooperative work...........................	D87-4	526,938		9-26-86					
	D87-4A		8,336	3-4-87					535,275
Gifts, donations, and bequests for forest and rangeland research....................	D87-5	200		9-26-86	25				175

Attachment B - Status of Deferrals - Fiscal Year 1987

As of August 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 8-1-87
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, Defense.............	D87-6	2,350		9-26-86					
	D87-6A		1,316,152	12-15-86	1,281,553				36,949
Family Housing									
Family housing, Defense....................	D87-7	76,943		9-26-86					
	D87-7A		190,022	12-15-86	210,650				56,315
DEPARTMENT OF DEFENSE - CIVIL									
Soldiers' and Airmen's Home									
Capital outlays...........................	D87-38	1,132		1-28-87	1,132				0
Wildlife Conservation, Military Reservations									
Wildlife conservation......................	D87-8	1,065		9-26-86					
	D87-8A		25	1-5-87					
	D87-8B		46	3-4-87	90				1,046
DEPARTMENT OF ENERGY									
Power Marketing Administration									
Alaska Power Administration, Operation and maintenance...............................	D87-9	165		9-26-86					165
Southwestern Power Administration, Operation and maintenance.................	D87-10	7,554		9-26-86					
	D87-10A		6,106	1-5-87					13,660
Western Area Power Administration, Construction, rehabilitation, operation and maintenance.........................	D87-29	4,485		1-5-87					4,485
Departmental Administration									
Departmental administration................	D87-30	24,182		1-5-87					24,182

Attachment B - Status of Deferrals - Fiscal Year 1987

As of August 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 8-1-87
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Health Resources and Services Administration									
Indian catastrophic health emergency fund..	D87-28	10,000		12-15-86	10,000				0
Centers for Disease Control									
Disease control, research, and training....	D87-39	2,428		1-28-87					2,428
Alcohol, Drug Abuse, and Mental Health Administration									
Alcohol, drug abuse, and mental health...	D87-40	10,000		1-28-87	10,000				0
Office of Assistant Secretary for Health									
Scientific activities overseas (special foreign currency program).......	D87-11	2,900		9-26-86					2,900
Social Security Administration									
Limitation on administrative expenses (construction)..........................	D87-12	7,073		9-26-86					
	D87-12A		89	1-28-87	12				7,151
Limitation on administrative expenses (information technology systems)..........	D87-57	134,437		3-4-87					134,437
DEPARTMENT OF THE INTERIOR									
Bureau of Land Management									
Payments for proceeds, sale of Mineral Leasing Act of 1920, Section 40(d)........	D87-31	49		1-5-87					49
DEPARTMENT OF JUSTICE									
Office of Justice Programs									
Crime victims fund........................	D87-13	70,000		9-26-86					70,000
DEPARTMENT OF LABOR									
Employment Standards Administration									
Salaries and expenses......................	D87-41	9,659		1-28-87	9,659				0

Attachment B - Status of Deferrals - Fiscal Year 1987

As of August 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 8-1-87
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive......	D87-14	6,100		9-26-86					
	D87-14A		14,000	1-5-87					20,100
Other									
Assistance for implementation of a Contadora agreement......................	D87-15	2,000		9-26-86	2,000				0
DEPARTMENT OF TRANSPORTATION									
Federal Railroad Administration									
Rail service assistance....................	D87-42	462		1-28-87		462	P.L. 100-71		0
Railroad safety............................	D87-43	1,101		1-28-87	1,101				0
Conrail labor protection...................	D87-44	646		1-28-87	646				0
Northeast corridor improvement program.....	D87-45	16,962		1-28-87		16,962	P.L. 100-71		0
Conrail commuter transition assistance.....	D87-46	10,000		1-28-87		10,000	P.L. 100-71		0
Urban Mass Transportation Administration									
Research, training and human resources.....	D87-47	4,336		1-28-87		4,336	P.L. 100-71		0
Interstate transfer grants - transit.......	D87-48	51,800		1-28-87		51,800	P.L. 100-71		0
Federal Aviation Administration									
Operation and maintenance, Metropolitan Washington Airports......................	D87-49	12,214		1-28-87	12,214				0
Facilities and equipment (Airport and airway trust fund)......................	D87-16	803,877		9-26-86					
	D87-16A		295,611	12-15-86	19,996				1,079,492
Coast Guard									
Research, development, test, and evaluation.............................	D87-50	5,000		1-28-87	5,000				0
Offshore oil pollution compensation fund...	D87-51	2,154		1-28-87	2,154				0
Deepwater port liability fund.............	D87-52	5,176		1-28-87	5,176				0
Office of the Secretary									
Payments to air carriers...................	D87-53	10,748		1-28-87	10,748				0

Attachment B - Status of Deferrals - Fiscal Year 1987

As of August 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congres-sionally Required Releases	Congres-sional Action	Cumulative Adjustments	Amount Deferred as of 8-1-87
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
Local government fiscal assistance trust fund....................................	D87-17	74,149		9-26-86	71,221			5	2,933
Local government fiscal assistance trust fund....................................	D87-21	5,981		9-26-86	6,703			723	1
ENVIRONMENTAL PROTECTION AGENCY									
Research and development..................	D87-54	11,000		1-28-87		11,000	P.L. 100-71		0
Abatement, control, and compliance.........	D87-55	11,400		1-28-87		11,400	P.L. 100-71		0
OTHER INDEPENDENT AGENCIES									
Commission on the Ukraine Famine									
Salaries and expenses.....................	D87-18	100		9-26-86					100
Office of the Federal Inspector for the Alaska Natural Gas Transportation System,									
Salaries and expenses....................	D87-19	411		9-26-86	411				0
Pennsylvania Avenue Development Corporation									
Land acquisition and development fund......	D87-20	11,873		9-26-86					11,873
United States Railway Association									
Administrative expenses....................	D87-56	1,155		1-28-87	1,155				0
TOTAL, DEFERRALS...........................		7,274,185	4,183,392		6,322,236	174,286		731	4,961,786

Note: All of the above amounts represent budget authority except the Local Government Fiscal Assistance Trust Fund (D87-21) of outlays only.

[FR Doc. 87-18694 Filed 8-14-87; 8:45 am]

BILLING CODE 3110-01-C

Reader Aids

Federal Register

Vol. 52, No. 158

Monday, August 17, 1987

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-1184
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual	523-5230

Other Services

Library	523-5240
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List August 14, 1987

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $595.00 domestic, $148.75 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, CHOICE, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$9.00	Jan. 1, 1987
3 (1986 Compilation and Parts 100 and 101)	11.00	[1] Jan. 1, 1987
4	14.00	Jan. 1, 1987
5 Parts:		
1-1199	25.00	Jan. 1, 1987
1200-End, 6 (6 Reserved)	9.50	Jan. 1, 1987
7 Parts:		
0-45	25.00	Jan. 1, 1987
46-51	16.00	Jan. 1, 1987
52	23.00	Jan. 1, 1987
53-209	18.00	Jan. 1, 1987
210-299	22.00	Jan. 1, 1987
300-399	10.00	Jan. 1, 1987
400-699	15.00	Jan. 1, 1987
700-899	22.00	Jan. 1, 1987
900-999	26.00	Jan. 1, 1987
1000-1059	15.00	Jan. 1, 1987
1060-1119	13.00	Jan. 1, 1987
1120-1199	11.00	Jan. 1, 1987
1200-1499	18.00	Jan. 1, 1987
1500-1899	9.50	Jan. 1, 1987
1900-1944	25.00	Jan. 1, 1987
1945-End	26.00	Jan. 1, 1987
8	9.50	Jan. 1, 1987
9 Parts:		
1-199	18.00	Jan. 1, 1987
200-End	16.00	Jan. 1, 1987
10 Parts:		
0-199	29.00	Jan. 1, 1987
200-399	13.00	Jan. 1, 1987
400-499	14.00	Jan. 1, 1987
500-End	24.00	Jan. 1, 1987
11	7.00	Jan. 1, 1986
12 Parts:		
1-199	11.00	Jan. 1, 1987
200-299	27.00	Jan. 1, 1987
300-499	13.00	Jan. 1, 1987
500-End	27.00	Jan. 1, 1987
13	19.00	Jan. 1, 1987
14 Parts:		
1-59	21.00	Jan. 1, 1987
60-139	19.00	Jan. 1, 1987
140-199	9.50	Jan. 1, 1987
200-1199	19.00	Jan. 1, 1987
1200-End	11.00	Jan. 1, 1987
15 Parts:		
0-299	10.00	Jan. 1, 1987
300-399	20.00	Jan. 1, 1987
400-End	14.00	Jan. 1, 1987

Title	Price	Revision Date
16 Parts:		
0-149	12.00	Jan. 1, 1987
150-999	13.00	Jan. 1, 1987
1000-End	19.00	Jan. 1, 1987
17 Parts:		
1-199	14.00	Apr. 1, 1987
200-239	14.00	Apr. 1, 1987
240-End	19.00	Apr. 1, 1987
18 Parts:		
1-149	15.00	Apr. 1, 1987
150-279	14.00	Apr. 1, 1987
280-399	13.00	Apr. 1, 1987
400-End	8.50	Apr. 1, 1987
19 Parts:		
1-199	27.00	Apr. 1, 1987
200-End	5.50	Apr. 1, 1987
20 Parts:		
1-399	12.00	Apr. 1, 1987
400-499	23.00	Apr. 1, 1987
500-End	24.00	Apr. 1, 1987
21 Parts:		
1-99	12.00	Apr. 1, 1987
100-169	14.00	Apr. 1, 1987
170-199	16.00	Apr. 1, 1987
200-299	5.50	Apr. 1, 1987
300-499	26.00	Apr. 1, 1987
500-599	21.00	Apr. 1, 1987
600-799	7.00	Apr. 1, 1987
800-1299	13.00	Apr. 1, 1987
1300-End	6.00	Apr. 1, 1987
22 Parts:		
1-299	19.00	Apr. 1, 1987
300-End	13.00	Apr. 1, 1987
23	16.00	Apr. 1, 1987
24 Parts:		
0-199	14.00	Apr. 1, 1987
200-499	26.00	Apr. 1, 1987
500-699	9.00	Apr. 1, 1987
700-1699	18.00	Apr. 1, 1987
1700-End	12.00	Apr. 1, 1987
25	24.00	Apr. 1, 1987
26 Parts:		
§§ 1.0-1.60	12.00	Apr. 1, 1987
§§ 1.61-1.169	22.00	Apr. 1, 1987
§§ 1.170-1.300	17.00	Apr. 1, 1987
§§ 1.301-1.400	14.00	Apr. 1, 1987
§§ 1.401-1.500	21.00	Apr. 1, 1987
§§ 1.501-1.640	15.00	Apr. 1, 1987
§§ 1.641-1.850	17.00	Apr. 1, 1987
*§§ 1.851-1.1000	27.00	Apr. 1, 1987
§§ 1.1001-1.1400	16.00	Apr. 1, 1987
*§§ 1.1401-End	20.00	Apr. 1, 1987
2-29	20.00	Apr. 1, 1987
30-39	13.00	Apr. 1, 1987
40-49	12.00	Apr. 1, 1987
50-299	14.00	Apr. 1, 1987
300-499	15.00	Apr. 1, 1987
500-599	8.00	[2] Apr. 1, 1980
600-End	6.00	Apr. 1, 1987
27 Parts:		
1-199	21.00	Apr. 1, 1987
200-End	13.00	Apr. 1, 1987
28	21.00	July 1, 1986
29 Parts:		
0-99	16.00	July 1, 1986
100-499	7.00	July 1, 1986
500-899	24.00	July 1, 1986
900-1899	9.00	July 1, 1986
1900-1910	27.00	July 1, 1986
1911-1919	5.50	[3] July 1, 1984

Title	Price	Revision Date
1920-End	29.00	July 1, 1986
30 Parts:		
0-199	16.00	[4] July 1, 1985
200-699	8.50	July 1, 1986
700-End	17.00	July 1, 1986
31 Parts:		
0-199	11.00	July 1, 1986
200-End	16.00	July 1, 1986
32 Parts:		
1-39, Vol. I	15.00	[5] July 1, 1984
1-39, Vol. II	19.00	[5] July 1, 1984
1-39, Vol. III	18.00	[5] July 1, 1984
1-189	17.00	July 1, 1986
190-399	23.00	July 1, 1986
400-629	21.00	July 1, 1986
630-699	13.00	July 1, 1986
700-799	15.00	July 1, 1986
800-End	16.00	July 1, 1986
33 Parts:		
1-199	27.00	July 1, 1986
200-End	18.00	July 1, 1986
34 Parts:		
1-299	20.00	July 1, 1986
300-399	11.00	July 1, 1986
400-End	25.00	July 1, 1986
35	9.50	July 1, 1986
36 Parts:		
1-199	12.00	July 1, 1986
200-End	19.00	July 1, 1986
37	12.00	July 1, 1986
38 Parts:		
0-17	21.00	July 1, 1986
18-End	15.00	July 1, 1986
39	12.00	July 1, 1986
40 Parts:		
1-51	21.00	July 1, 1986
52	27.00	July 1, 1986
53-60	23.00	July 1, 1986
61-80	10.00	July 1, 1986
81-99	25.00	July 1, 1986
100-149	23.00	July 1, 1986
150-189	21.00	July 1, 1986
190-399	27.00	July 1, 1986
400-424	22.00	July 1, 1986
425-699	24.00	July 1, 1986
700-End	24.00	July 1, 1986
41 Chapters:		
1, 1-1 to 1-10	13.00	[6] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)	13.00	[6] July 1, 1984
3-6	14.00	[6] July 1, 1984
7	6.00	[6] July 1, 1984
8	4.50	[6] July 1, 1984
9	13.00	[6] July 1, 1984
10-17	9.50	[6] July 1, 1984
18, Vol. I, Parts 1-5	13.00	[6] July 1, 1984
18, Vol. II, Parts 6-19	13.00	[6] July 1, 1984
18, Vol. III, Parts 20-52	13.00	[6] July 1, 1984
19-100	13.00	[6] July 1, 1984
1-100	9.50	July 1, 1986
101	23.00	July 1, 1986
102-200	12.00	July 1, 1986
201-End	7.50	July 1, 1986
42 Parts:		
1-60	15.00	Oct. 1, 1986
61-399	10.00	Oct. 1, 1986
400-429	20.00	Oct. 1, 1986
430-End	15.00	Oct. 1, 1986
43 Parts:		
1-999	14.00	Oct. 1, 1986
1000-3999	24.00	Oct. 1, 1986
4000-End	11.00	Oct. 1, 1986
44	17.00	Oct. 1, 1986
45 Parts:		
1-199	13.00	Oct. 1, 1986
200-499	9.00	Oct. 1, 1986
500-1199	18.00	Oct. 1, 1986
1200-End	13.00	Oct. 1, 1986
46 Parts:		
1-40	13.00	Oct. 1, 1986
41-69	13.00	Oct. 1, 1986
70-89	7.00	Oct. 1, 1986
90-139	11.00	Oct. 1, 1986
140-155	8.50	[7] Oct. 1, 1985
156-165	14.00	Oct. 1, 1986
166-199	13.00	Oct. 1, 1986
200-499	19.00	Oct. 1, 1986
500-End	9.50	Oct. 1, 1986
47 Parts:		
0-19	17.00	Oct. 1, 1986
20-39	18.00	Oct. 1, 1986
40-69	11.00	Oct. 1, 1986
70-79	17.00	Oct. 1, 1986
80-End	20.00	Oct. 1, 1986
48 Chapters:		
1 (Parts 1-51)	21.00	Oct. 1, 1986
1 (Parts 52-99)	16.00	Oct. 1, 1986
2	27.00	Dec. 31, 1986
3-6	17.00	Oct. 1, 1986
7-14	23.00	Oct. 1, 1986
15-End	22.00	Oct. 1, 1986
49 Parts:		
1-99	10.00	Oct. 1, 1986
100-177	24.00	Oct. 1, 1986
178-199	19.00	Oct. 1, 1986
200-399	17.00	Oct. 1, 1986
400-999	21.00	Oct. 1, 1986
1000-1199	17.00	Oct. 1, 1986
1200-End	17.00	Oct. 1, 1986
50 Parts:		
1-199	15.00	Oct. 1, 1986
200-End	25.00	Oct. 1, 1986
CFR Index and Findings Aids	27.00	Jan. 1, 1987
Complete 1987 CFR set	595.00	1987
Microfiche CFR Edition:		
Complete set (one-time mailing)	155.00	1983
Complete set (one-time mailing)	125.00	1984
Complete set (one-time mailing)	115.00	1985
Subscription (mailed as issued)	185.00	1986
Subscription (mailed as issued)	185.00	1987
Individual copies	3.75	1987

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1987. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1986. The CFR volume issued as of July 1, 1984, should be retained.

[4] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[7] No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept. 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.